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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 325/2017

EAST DELHI MUNICIPAL CORPORATION

..... Appellant

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Anushruti & Ms.
Vasundhara Nayyar, Advocates. (M-
9810674872)

versus

SANJAY BANSAL

..... Respondent

Through: Mr. Surendra Bharti, Advocate (M-
9958457236) along with respondent in
person.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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19.01.2018

RFA 325/2017 & CM APPL. 11478/2017 (Stay)

1. East Delhi Municipal Corporation has filed the present appeal which impugns judgment and order dated 23rd July, 2016. The impugned order was passed by the Additional Senior Civil Judge (East), Karkardooma Courts and hence an appeal would lie before the Additional District Judge (hereinafter referred as 'ADJ'), Karkardooma Courts and not before this court. Ms. Mini Pushkarna, Standing Counsel submits that the filing of the appeal before this Court, was an error inasmuch as there were several similar matters in which appeals were filed in this Court and accordingly this appeal came to be preferred.
2. Ms. Mini Pushkarna, Standing Counsel submits that the appeal be transferred to the District Court and time spent before this Court be excluded, as the Appellant was prosecuting this appeal in good faith before this Court.
3. The counsel for the Respondent submits that the appeal ought to have been preferred within 30 days from the impugned order as it was liable to be

filed before the ADJ and not before the High Court.

4. The matter has been pending before this Court since 24th March, 2017. The delay of one day in filing the appeal in this court has already been condoned on the said date. The delay of 118 days in re-filing is still pending and CM APPL.11480/2017 has been preferred by the Appellant seeking condonation of delay in re-filing.

5. Since the delay in filing of the appeal was already condoned, the present appeal is directed to be presented to the appropriate court of the ADJ in Karkardooma Courts. All arguments in respect of limitation on behalf of both parties are left open. The learned ADJ would consider as to whether the delay in re-filing ought to be condoned or not and the effect thereof. The period between 24th March, 2017 till 19th January, 2018 when the matter was pending in this Court, would however be excluded for the purpose of limitation. Accordingly, the file of the case is returned to the Appellant for presentation before the District Judge, Karkardooma Courts for allotting the appropriate court. Vide order dated 10th August, 2017, this court had directed that the decretal amount stands deposited by the Appellant before the Executing Court and would not be released in favour of the Respondent. The said order would continue to be in operation till the first date of hearing before the ADJ. It is left to the learned ADJ to pass appropriate orders on the said date.

6. With the above directions, the appeal and the applications be returned to the Appellant.

7. Appeal and all applications stand disposed off.

PRATHIBA M. SINGH, J

JANUARY 19, 2018/ R