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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 17/2017**

SUBE SINGH

..... Appellant

Through: Mr. Sukhbir Singh, Advocate (Mobile
No. 9971452626).

versus

SUBHASH GOEL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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27.11.2018

C.M. Appl. No. 49169/2018 (for restoration), C.M. Appl. No. 49170/2018 (for delay in filing of 183 days), C.M. Appl. No. 49172/2018 (for delay in re-filing of 9 days) and C.M. Appl. No. 49171/2018 (for stay)

1. By these applications the appellant/applicant seeks restoration of the appeal which was dismissed in default by a Learned Single Judge of this Court vide order dated 27.2.2018, besides asking for condonation of delay in filing the appeal of 183 days. The order dated 27.2.2018 passed by a Learned Single Judge of this Court is a very telling order and this order is therefore reproduced as under:-

“Vide order dated 15th March, 2017, the application for condonation of delay of 30 days in refiling the appeal was allowed subject to payment of Rs.5,000/- as cost. Counsel for the Respondent submits that the costs have not been paid.

Vide the very same order, the decretal amount was also directed to be deposited and operation of the impugned judgment and decree was stayed subject to the said deposit being made. The records indicate that no deposit of decretal amount has been made.

The appeal arises out of a suit for recovery filed by the Respondent/Plaintiff. Counsel for the Respondent submits that even the copy of Paper Book has also not been furnished.

A perusal of both the electronic record and hard file of the appeal reveals that even the impugned order has not been filed by the Appellant. Matter was passed over in the morning and none appeared for the Appellant. Even on second call, there is no appearance on behalf of the Appellant. The index of the appeal describes item no.7 as final judgment and decree dated 19th September, 2016. However, a perusal of the annexure reveals that the same are the pleadings and documents from the trial court record. There is another index filed on 30th January, 2017 which describes the documents filed as certified copy of the order. A perusal of the same also reveals that it is not the copy of the order but application for grant of unconditional leave to defend along with affidavit in support. The paper file has an uncertified/typed copy of order dated 19th September, 2016 which has been struck out.

None has appeared for the Appellant even on the last four hearings before the Registrar and Court. There is no compliance of order dated 15th March, 2017 either in terms of the payment of cost or deposit of the decretal amount. Even certified copy of the pleadings and order, as directed by order dated 15th March, 2017, has not been filed.

Appeal is dismissed. Miscellaneous application also stands disposed of as infructuous.”

2. A reading of the aforesaid order shows that the appellant did not firstly pay costs of Rs.5,000/- imposed for condonation of the delay of 30 days in filing of the appeal. Not only that, the impugned judgment challenging the appeal was a judgment passing a money decree by dismissing the leave to defend application but in spite of directions, decretal amount was not deposited in this Court. Not only decretal amount was not deposited, the counsel for the respondent was

not even furnished copy of the paper book of the appeal with the fact that the paper book of the appeal was completely defective and the relevant certified copy was also not filed.

3. In addition to this, this Court would like to note that when this appeal was dismissed on 27.2.2018 for non-appearance, on all earlier dates of hearing except the first hearing, no one was present for the appellant. The appellant was therefore not represented on 12.10.2017, 25.9.2017, 28.8.2017 and 18.5.2017. In fact in the appeal notice was issued on 15.3.2017 when the respondent was represented without even notice being issued. It is also noted that the impugned judgment dismissed the leave to defend application in an Order 37 CPC suit by referring to the fact that appellant/defendant had issued a promissory note for the loan amount which was prepared in the hand of the son of the appellant/defendant and was also witnessed by the son of the appellant/defendant. The appellant/defendant had also given a cheque which was dishonoured on presentation.

4. Though counsel for the appellant/defendant argued that the appellant/defendant was kept in dark by his earlier Advocate, in the facts of the present case, I cannot believe the bland statement made on behalf of the appellant/defendant inasmuch as the non-prosecution of the appeal and non-appearance of the appellant through Advocate is not on one occasion but on repeated occasions, and which must obviously be because somehow or other the appeal was wanted to be continued without deposit of the decretal amount.

5. In my opinion therefore there is no merit in this application for restoration, as also the application for condonation of delay, and the

same are therefore dismissed. Interim application filed alongwith the restoration application is also dismissed.

VALMIKI J. MEHTA, J

NOVEMBER 27, 2018

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