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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1265/2018 & CM APPL. 43336/2018**
M/S PARAMOUNT SURGIMED LTD Petitioner

Through: Mr. Yogendra Singh, Advocate.
versus

PRADEEP GUPTA Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **15.10.2018**

CM APPL.43337/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 1265/2018 & CM APPL. 43336/2018

Initial submissions made on behalf of the petitioner.

Vide the present petition, the petitioner assails the impugned order dated 20.08.2018 of the Court of the learned ADJ-04, South East, Saket in Miscellaneous No.10/17 vide which an application under Order IX Rule 13 of the CPC read with Section 5 of the Limitation Act, 1963 filed on behalf of the respondent to the present petition was allowed.

It has been submitted on behalf of the petitioner that there has been no reasonable explanation put forth satisfactorily explaining the delay in institution of the application and that the respondent having

been duly served with the summons for settlement of issues in the instant case, has deliberately evaded to put in appearance before the learned Trial Court.

A bare perusal of the impugned order itself reflects that the after the institution of the said suit on 08.04.2015 in which the defendant after service had even filed his written statement on 25.07.2015, whereafter the submissions made on behalf of the respondent are to the effect that he being a resident of Jaipur, Rajasthan could not be aware of his counsel having not put in appearance before the learned Trial Court and having not assisted him effectively, in the circumstances cannot be disbelieved taking into account the factum that there was a counter claim filed by the respondent and no ostensible reasons thus can be indicated to have been brought on record to show that there were lack of *bona fides* on behalf of the respondent in institution of the application.

There is another aspect also that along with the application under Section 5 of the Limitation Act, 1963, there was an outpatient slip also issued from Sawai Man Singh Hospital that had been annexed before the learned Trial Court to indicate that the respondent had also suffered a fall and injury to his lower back and thus there was a delay in institution of the application. There is thus, no infirmity in the impugned order.

The petition is disposed of accordingly.

ANU MALHOTRA, J

OCTOBER 15, 2018/NC