

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

+ **RFA No.1019/2017 and C.M. No.4954/2018 (stay)**

% **8<sup>th</sup> February, 2018**

MUKESH KUMAR ..... Appellant

Through: Mr. M.K. Singh, Advocate.

versus

MAAN SINGH ..... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. Respondent is served. No one is present for the respondent in spite of the matter having been called out for the second time.

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the Trial Court dated 8.9.2017 by which trial court has refused to condone the delay in filing of the appearance under Order XXXVII CPC and has decreed the suit. The delay in filing the appearance is of approximately 60 days.

3. Facts of the present case are that the appellant/defendant pleaded that he was served with summons of the suit under Order XXXVII CPC through his wife on 21.1.2017, however, since the next date of hearing mentioned in the AD card was 23.3.2017, hence the appellant/defendant who was in his village in Vaishali in Bihar for treating his old father was under a misconception that in the suit appearance will have to be put on 23.3.2017. On 15.3.2017 on coming back from village when the appellant/defendant went to his Advocate it transpired that the suit was under Order XXXVII CPC in which appearance was to be put within 10 days of the service, and therefore, it is argued that there is genuine misunderstanding on the part of the defendant for non-filing appearance in time in the suit filed under Order XXXVII CPC.

4. It has been held by the Supreme Court in the case of *N. Balakrishnan Vs. M. Krishnamurthy AIR 1998 SC 3222* that once there is delay then some sort of negligence is implicit but unless the delay is caused for *malafide* reasons or that the delay amounts to gross negligence, Courts should be liberal in condoning the delay. I may note that in the present case the appellant/defendant derives no benefit

of delay in filing of the appearance in the Order XXXVII CPC suit because the consequence of such non-appearance will be straightaway decreeing of the Order XXXVII CPC suit and therefore the explanation offered by the appellant/defendant with respect to wrong impression on account of next date being fixed in the suit under Order XXXVII CPC as 23.3.2017, therefore there is sufficient reason for filing delay in appearance. Also, the delay in filing the appearance, it is noted is not of many months or more than a year, and therefore the respondent/plaintiff can be compensated by costs for condoning the delay.

5. In view of the above discussion, this appeal is allowed. Impugned order dated 8.9.2017 and the consequent judgment passed decreeing the suit under Order XXXVII CPC is set aside subject to the appellant/defendant paying a sum of Rs.15,000/- as costs to the respondent/plaintiff before the trial court.

6. Parties to appear before the District & Sessions Judge (North), Rohini Courts, Delhi on 13<sup>th</sup> March, 2018 and the District & Sessions Judge will mark the suit for disposal to a competent court in accordance with law.

**FEBRUARY 08, 2018**  
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**VALMIKI J. MEHTA, J**