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

Date of Decision: 29.08.2019

+ LPA 272/2019

M/S KONARK INFRA DEVELOPERS PVT LTD & ORS

..... Appellants

Through: Col. Rajnish Soni, Director of the
company /Appellant No.2

versus

INDIA AFFORDABLE HOUSING SOCIETY SOLUTIONS (IAHS)

..... Respondent

Through: Mr. O.N. Sharma, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. 18890/2019

This application has been preferred under Section 5 of the Limitation Act, 1963 for condonation of delay of 58 days in preferring this appeal.

Having heard the Director of the appellant company and looking into the reasons stated in the application, there are reasonable grounds for condonation of delay. We hereby condone the delay of 58 days in preferring this appeal.

The application is allowed and disposed of.

LPA 272/2019

1. This Letters Patent Appeal has been preferred by the appellants
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against the order dated 10th December, 2018 passed in CS(OS) 82/2014, which was a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC).

2. Col. Rajnish Soni – appellant No.2, has appeared in person, being the Director of the appellant company, and has submitted that the appellant company has no money. This appellant company has not even filed Income Tax Returns and the company has been struck off by the Registrar of Companies.

3. It appears from the order passed in CS(OS) 82/2014, dated 10th December, 2018, that earlier, *vide* order dated 3rd April, 2018, conditional leave to defend in the civil suit, under Order XXXVII Rule 3(5) CPC, was given, upon deposition of the amount of ₹3.00 crores.

4. The order granting conditional leave to defend in the civil suit, dated 3rd April, 2018, was challenged by the appellants in LPA 634/2018. The said appeal was not entertained by this Court *vide* order dated 20th November, 2018 (Annexure A-1 to the memo of this appeal). Thus, the order passed in CS(OS) 82/2014 dated 3rd April, 2018 granting conditional leave to defend under Order XXXVII Rule 3 (5) CPC has attained finality.

5. It further appears from the facts of the case that the amount to be deposited by the appellant company has not been deposited at all. As the conditional leave to defend, allowed by order dated 3rd April, 2018, was not followed by the appellants, the suit was decreed *vide* judgment and decree dated 10th December, 2018. Being aggrieved and dissatisfied with the said judgment and decree, this appeal has been preferred by the original defendants.

6. Having heard the appellant No.2, in person and the counsel for the respondent and looking into the facts of the case, it appears that no error has

been committed by the learned Single Judge in deciding CS(OS) 82/2014 *vide* judgment and decree dated 10th December, 2018 because the appellant company has not deposited the amount of ₹3.00 crore, for which conditional leave was granted in CS(OS) 82/2014 under Order XXXVII Rule 3 (5) CPC, especially when LPA 634/2018 was also dismissed by this Court *vide* order dated 20th November, 2018.

7. Moreover, it is submitted by Col. Rajnish Soni that a review application has been preferred, bearing Review Application No.225/2015, for the review of the judgment and decree passed in CS(OS) 82/2014, dated 10th December, 2018, and the said review application is still pending. Hence, we find no reason to entertain this appeal and the same is hereby dismissed.

CM APPL. 18888/2019 (*Stay*)

8. In view of the order passed in LPA 272/2019, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 29, 2019

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