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

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Delivered on : 26th November, 2019

+ **RFA 565/2019 & CM APPL Nos.27531-32/2019**

M/S HIMLAND HOUSING PVT LTD & ORS Appellants
Through : Mr.Arvind Kumar Singh and
Ms.Sangeeta, Advocates.

versus

MINI PANWAR Respondent
Through : Mr.Rajendra Sahu with Mr.Vineet
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal challenges the impugned judgment and decree dated 21.05.2018 by the learned Additional District Judge-02/ Shahdara District, Karkardooma Courts, Delhi/ (hereinafter referred to as the learned '*Trial Court*') in Civil Suit No.247/2017 whereby the suit filed by respondent/plaintiff for recovery of Rs.5.00 lacs was decreed under Order VIII Rule 5(4) and XV Rule 1 CPC after framing of issues and without leading any evidence.

2. The CM APPL No.27532/2019 is moved by the appellant/ applicant seeking condonation of delay of 260 days in filing the appeal on the ground the certified copy of the impugned judgment and decree though applied on 25.05.2018, was prepared on 29.05.2018 and obtained on 01.06.2018, yet there was a delay of 263 days in filing the appeal only because of the 14 cases and FIR No.351/2016 filed by the respondent and his family members etc against the appellants herein – the details thereof being given in para No.3 of the application. The appellant alleges that on

account of being busy in cooperating with the investigation of FIR and follow up of above mentioned 14 cases there was hardly any time and resources left to file the present appeal, hence there was delay and it be condoned.

3. The reason given by the appellant - being busy in another cases – is a casual remark and is certainly not *sufficient* cause / reason for non-filing the appeal in time.

4. Admittedly, where each day's delay needs to be explained, but in the application, the appellant had tried to explain the delay of 263 days by one stroke saying the appellant company was busy in other matters concerning the same parties. No cogent reason for delay is mentioned. There is no merit in the application, hence the application is dismissed.

5. Even on merits though the appellant has alleged the husband of the respondent to be its Chartered Accountant from the year 2007 to 2010 and being well aware of the internal affairs of the appellant company, have been maintaining account books of the appellant, including all other allied official activities, hence made fictitious entries, including an entry to the tune of Rs.5.00 lacs in the account of the appellant herein, however, the learned Trial Court noted above assertions and passed the following impugned order:-

“4. After going through the pleadings, the aspect of investment of Rs.5 Lakhs by the plaintiff in the project of the defendants is not denied. What the defendant answered is that, they received a legal notice and that interim reply was sent to plaintiffs counsel. What the interim reply sent by the defendant is not mentioned in the Written Statement and explained; nor a copy of the said interim reply is filed by the defendants alongwith the Written Statement. There is no specific denial of the investment of Rs 5 lakhs made by the plaintiff on 26.03.2014 through RTGS from State Bank of India.

7. Considering the silence on the part of the defendants in the written statement, towards the allegation of the investment made by the

plaintiff on 26.03.2014 a sum of Rs. 5 lakhs through RTGS, which is not denied, the only inference that can be drawn is that the defendants admit the investments of Rs. 5 Lakhs as averred in the plaint.

8. As regards the claim of a sum of Rs. 5 lakhs. The ld. Counsel for the defendants submits that the same is neither admitted nor denied.

9 Order 8 rule 5 of CPC is very clear as regards the denials to be made in the W.S. as under:

"5. Specific denial.-(1) Every allegation of fact implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub rule (1) or under sub-rule (2), the court shall have due regard to the fact whether the defendant could have, or has engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

10. In view of the above, this court is bound to pass a decree on the admitted part as a consequential inference to the pleadings. This court is of the opinion that at the first hearing itself after considering the pleadings, it is made clear that the parties are not in variance or issue with regard to this question of fact and considering order 15 rule 1 of CPC, this court may at once pronounce its judgment. In view of the above, the plaintiff is entitled to Rs. 5 lakhs."

6. I also see no illegality in the reasoning and conclusion of the learned Trial Court especially when the suit is decreed after framing of the issues and without calling for the evidence of either side.

7. In view of above there is no merit in the appeal too. The pending application, if any, also stand disposed of. No order as to costs.

YOGESH KHANNA, J.

NOVEMBER 26, 2019/M