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

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Delivered on : 26th November, 2019

+ **RFA 562/2019 and CM APPL No.27431-32/2019**

M/S HIMLAND HOUSING PVT LTD & ORS Appellants

Through : Mr.Arvind Kumar Singh and
Ms.Sangeeta, Advs.

versus

M/S OMBIR PANWAR HUF Respondent

Through : Mr.Rajendra Sahu with Mr.Vineet
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal challenges the impugned order and decree dated 11.07.2018 passed by the learned Additional District Judge-01/ Shahdara District, Karkardooma Courts, Delhi/ (hereinafter referred to as the learned '*Trial Court*') in Civil Suit No.286/2017 whereby the suit filed by the respondent/plaintiff for recovery of Rs.21.00 lacs was decreed to the extent of Rs.6.00 lacs on allowing of the application of respondent under Order XII Rule 6 CPC.

2. The CM APPL No.27432/2019 is moved by the appellant/ applicant seeking condonation delay of 173 days in filing the appeal on the ground the certified copy of the impugned judgment and decree though applied on 11.07.2018, was prepared on 21.08.2018 and obtained on 01.09.2018, yet there was a delay of 173 days in filing the appeal only because of the 14 cases and FIR No.351/2016 filed by the respondent and his family members 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 certainly not *sufficient* cause / reason for non - filing of the appeal in time.

4. Admittedly, the law as it stands today – each day's delay needs to be explained, but in the application, the appellant had tried to explain the delay of 173 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 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 dated 18.02.2015 to the tune of Rs.15.00 lacs in cash in the account of the appellant herein, however, the learned Trial Court noted above assertions and passed the following impugned order:-

“5. Upon bare perusal of the written statement it is seen that the defendants have admitted that plaintiff had paid Rs. 6 lacs to the D-2 through RTGS on 17.07.2014. This assertion of the defendant is that the said amount was deposited without there being any contract between the parties. If this submission is taken at its face value even then the defendants as per their own assertion would not have any ground for retaining the said of amount of Rs. 6 lacs. There is nothing in written statement to suggest why the said amount was paid by the plaintiff to the defendant or why the defendant chose to remain silent till the filing of the present suit, regarding receipt of the said amount on

17.07.2014. The D-1 is admittedly accompany and its account are to be audited every year in accordance with law. It is unbelievable that D-1 was not aware regarding the receipt of the said amount in its account. This being so the defendant was required to assert the circumstances, in which the said amount was received in its account. However, the only assertion of the defendant company in their written statement are that the said amount was deposited by the plaintiff in the account of the defendant without any contract or agreement. During course of argument it was urged that the case of the defendant, is based upon fraud. However, the only fraud pleaded in the written statement is that the plaintiff had misused a blank signed shared transfer form of Sh. Pradeep Kumar Pathak Exdirector of the defendant company. The D-1 was required to plead the completer particulars of the fraud, purportedly committed by the plaintiff but there is no such assertion in the entire written statement, in the written argument it was urged that the plaintiff got deposited some amount in defendant company asserting that the same were repayment to the defendant company and when the period of limitation for filing suit of recovery by the defendant company elapsed the plaintiff and such other persons starting filing suit for recovery against the defendant company and others. However, even the said assertion is vague. There are no particulars of the amounts allegedly received by the defendant company as repayment. There is nothing to suggest the identity the parsons from whom the repayment were due or the persons whom the said amount were received. Evan otherwise, the said ascertain of the defendant is beyond its pleadings.

6. To sum-up the defendants have admitted receipt of Rs. 6 lacs 17.07.2014 from the plaintiff through RTGS. The assertion of the defendant that the transaction was fraudulent is vague. The assertion of the defendant that there was no contract for transfer of flats or shares would not entitled the defendant to retain the said amount nor it; would raise any triable issue. The plaintiff is accordingly entitled to decree of Rs. 6 lacs."

6. I also see no illegality in the reasoning and conclusion of the learned Trial Court especially when the suit is decreed to an extent of Rs.6.00 lac only and the averments made by the respondent qua the cash payment of Rs.15.00 lacs being still pending evidence.

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

YOGESH KHANNA, J.

NOVEMBER 26, 2019

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