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

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Judgment delivered on: 27.07.2020

+ **CM(M) 391/2020**

MANISH SHARMA & ANR.

.... Petitioners

versus

SMT URMILA ARORA

..... Respondent

Advocates who appeared in this case:

For the petitioners: Mr. Manish Sharma, Advocate.

For the Respondent: Mr. Gaurang Bindra, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.16419/2020 (exemption from filing certified copy) & CM APPL.16420/2020 (exemption from filing attested copy of affidavit)

Exemptions are allowed subject to all just exceptions. The duly attested copy of affidavits shall be filed within one week of the resumption of the regular functioning of the Court.

CM(M) 391/2020 & CM APPL.16418/2020 (stay)

1. The hearing was conducted through video conferencing.
2. Petitioners impugn order dated 11.02.2020, whereby, Respondent's application under Section 5 of the limitation Act, 1963 seeking condonation of delay of 29 days in moving an application under Order 9 Rule 13 CPC

was allowed. Petitioners also impugn order dated 21.07.2020, whereby, application of the petitioner for dismissal of the petition under Order 9 Rule 13 CPC for failure to deposit costs has been dismissed.

3. Learned counsel for the petitioners submits that the petitioners had filed the subject Suit for recovery and since the respondent defendant did not appear in the suit, she were proceeded ex-parte and an ex-parte decree was passed.

4. It is contended that no reason was given in the application under Order 9 Rule 13 CPC as to why the defendant did not appear in the Suit and the Court, by its order dated 11.02.2020, though had noticed that no satisfactory explanation was given yet the delay in filing the application under Order 9 Rule 13 has been condoned subject to payment of costs.

5. Learned counsel for the petitioners further submits that even the costs was not paid on time and thereafter when the petitioners moved the subject application seeking dismissal of the application under Order 9 Rule 13 due to non-payment of costs, said application has been dismissed, however by imposing additional costs on the Respondents of Rs. 4,000/-

6. It may be noticed that the Application under Order 9 Rule 13 CPC filed by the respondent contends that the respondent is not residing at the address mentioned in the Memo of Parties of the Suit and had since shifted from the said address and is living with her daughter and further that she was not aware of the service by way of publication and no efforts were made by the petitioners to trace out the address of the respondent.

7. With regard to non-payment of the costs within time, it is contended that by order dated 11.02.2020, the case was listed for 13.04.2020 and respondents intended to make the payment of costs on the said date, however, in the month of March lockdown happened and because of the lockdown situation, respondent could not make arrangement of funds to pay the costs.

8. Trial Court has noticed that the issue is procedural and a good case on merit should not fail merely on the ground of limitation. The Court has taken a lenient view and not dismissed the application seeking condonation of delay of 29 days in filing the application under Order 9 Rule 13 CPC merely on a technical ground.

9. The order passed by the Trial Court is a discretionary order and normally where discretion has been exercised in favour of doing substantial justice, the High Court would be reluctant to interfere in the same in exercise of powers under Article 227 of the Constitution of India.

10. Respondent in her application under Order 9 Rule 13 had given several reasons for not appearing in the suit.

11. Without commenting on the merits of the application under Order 9 Rule 13, since the same is still pending, it is observed that Trial Court has exercised discretion by citing cogent reasons and accordingly does not warrant any interference.

12. With regard to delay in payment of costs, once again an explanation has been rendered by the respondent that she was expecting to pay the costs

on the next date before the Trial Court and since the Courts stopped functioning because of the COVID-19 pandemic, the cost was not paid.

13. Since both the orders are discretionary orders and the Trial Court has exercised its discretion, keeping in view substantial justice in mind, in my view, no interference is called for in the impugned orders dated 11.02.2020 and 21.07.2020.

14. The Petition is, accordingly, dismissed.

15. Petitioner is, however, directed to furnish the bank details of his accounts to the counsel for the respondent within 2 days and the respondent shall deposit the costs of Rs. 15,000/-, imposed by the impugned orders, in the account of the petitioner within 5 days thereof.

16. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.

JULY 27, 2020
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SANJEEV SACHDEVA, J