



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

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Date of decision: November 29, 2023

REVIEW PET. 328/2023, CM APPLs. 60749/2023 & 60750/2023
IN

+ RFA 163/2022

IMRAN JAMALI

..... Appellant

Through: Mr. V.K. Sharma and
Mr. P.K. Singh, Advs.

versus

INSHA KHANAM

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

REVIEW PET. 328/2023, CM APPLs. 60749/2023 & 60750/2023

1. This review petition has been filed by the appellant/defendant with an application seeking condonation of delay of 441 days.
2. The review petition has been filed seeking review of order dated April 22, 2022, whereby this Court has dismissed the first appeal filed by the appellant/defendant by relying upon the judgment of this Court in the case of *Jiwan Das v. Narain Das*, AIR 1981 Delhi 291.
3. The submission of Mr. V.K. Sharma, learned counsel appearing for the appellant/defendant is that this Court had passed the order dated April 22, 2022, in the appeal without considering the law laid down by the Supreme Court in the case of *S.M. Asif v. Virender Kumar Bajaj*,



(2015) 9 SCC 287, inasmuch as the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. According to him, the judgment under Order XII Rule 6 CPC can be passed only when there is a plain unequivocal, clear and positive admission and also it must be complete by itself by which the party making such admission will not succeed in the suit. According to him, the seller who entered into an agreement to sell, never denied the contents of the agreement and had signed the same. Moreover, the appellant/defendant had paid about 80% of the consideration value in respect of the floor/flat and moreover, the appellant/defendant being in possession could not have been evicted only on the ground that there is an admission under Order XII Rule 6 CPC. I am not in agreement with the submissions made by learned counsel for the appellant/defendant/review petitioner for more than two reasons (i) the review petition itself is barred by 441 days. The reasoning given by the appellant seeking condonation of delay is that the appellant/defendant had filed an application under Order XXI Rule 29 of the CPC in the execution proceedings initiated by the respondent and against the order passed in the said application, he had filed a revision petition before this Court which was decided on October 31, 2023. I am afraid, the filing of an application under Order XXI Rule 29 CPC cannot be a ground to justify the delay in filing the review petition which is primarily against the order dated April 22, 2022, in the RFA and (ii) the ground on which the appeal was dismissed was because of the fact that the agreement to sell dated November 22, 2017 executed by the appellant/defendant with M/s Buildwell Private Limited was not a registered document, whereas the sale deed executed by the M/s Ruby



Buildwell Private Limited with the respondent is a registered deed and in this regard the observation made by this Court in paragraph 8 of the judgment dated April 22, 2022 is as follows:-

“8.The Trial Court was of the view that the appellant / defendant in the written statement admitted the case of both the parties that the previous owner of the suit was M/s Ruby Buildwell Pvt. Ltd., who has executed the registered sale deed for the suit property in favour of the respondent / plaintiff. The Trial Court has also referred to the fact that agreement to sell dated November 22, 2017 was executed by M/s Ruby Buildwell Pvt. Ltd. in favour of the appellant / defendant. It is also noted by the Trial Court that the said agreement to sell was not registered. Though, it is the case of the appellant / defendant that he had paid an amount of ₹ 32 Lakh in furtherance to the agreement to sell dated November 22, 2017, the Trial Court by taking the case set up by the appellant / defendant on the face value and by referring to the Judgment of this Court in Jiwan Das v. Narain Das AIR 1981 Delhi 291 held that till a decree of specific performance is obtained by the appellant / defendant, on the basis of agreement to sell dated November 22, 2017 the vendor or a purchaser from him is entitled to full enjoyment of the property. In other words, no interest has been passed in favour of the appellant / defendant with regard to the suit property.....”

4. The above shows the justification for this Court to reject the appeal filed by the appellant.

5. I find that the review petition along with pending application(s) is liable to be dismissed both on the ground of limitation as well as on merit. It is ordered accordingly. No cost.

V. KAMESWAR RAO, J

NOVEMBER 29, 2023/ds