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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: October 10, 2022

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RFA(OS) 17/2022

ZULEIKHA KARNIK

..... Appellant

Through: Mr. Pankaj Gupta, Mr. Tushar Sharma, Mr. Shadman Ahmed Siddiqui, Mohd. Faizaw and Mr. Siddharth Shubhanker Pandey, Advocates

versus

AVTAR KAUR

..... Respondent

Through: Mr. Mohit Chaudhary, Advocate

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE SAURABH BANERJEE****J U D G M E N T (oral)****CM APPL. 38371/2022(delay)**

1. By way of the present application, the applicant/appellant seeks condonation of delay of 1132 days in filing the captioned appeal against the impugned judgment dated 26.03.2019.
2. Vide order dated 14.09.2022, notice was issued and the non-applicant was directed to file reply and the same is on record. Two weeks were granted to the applicant to file rejoinder, however, the same is not on record.
3. Learned counsel for the applicant submits that though rejoinder is filed, however, the same is not required to be filed. Thus, the present application be decided in the absence of the rejoinder.
4. Accordingly, we have proceeded to decide the present application.
5. As per own case of the appellant, admittedly, though the statutory limitation period of 90 days for preferring the present appeal expired way



back on 24.06.2019, however, the present appeal has only been filed on 30.08.2022. In the present application, though the appellant seeks condonation of delay of 1132 days, however, it has miserably failed to show any sufficient cause worthy of merit to explain the said delay for preferring the appeal beyond the mandatory period so as to satisfy this Court.

6. As per appellant, main reason for preferring the present appeal at this junction is the respondent filing the execution petition for execution of the impugned judgment dated 26.03.2019. It is the own case of the appellant that the present appeal has only been filed after receipt of the summons of the said execution petition in May 2022.

7. Though the appellant has given the said dates, however, the appellant has failed to give any plausible and/or reasonable explanation for seeking condonation of delay during the period with effect from 24.06.2019 till May, 2022. The appellant has also been unable to offer any reasonable and plausible explanation for condonation of delay or show sufficient cause for seeking such condonation of delay for the whole period of 1132 days. In any event, filing of the said execution petition by the respondent can be no ground, either, for granting extension for filing of the present appeal, or, for condoning the delay involved. The present application has been based on a completely wrong premise.

8. Learned counsel for appellant has relied upon the judgement of the Supreme Court in *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123 to submit that the length of the delay is immaterial for condonation of delay and the same is a matter of discretion. There is no qualm about the same, however, it is settled law that what has to be taken into consideration is that the explanation sought to be offered for such delay has to be such, which is



satisfactory enough for this Court to exercise such discretion and is/ are there any sufficient cause(s) for condoning such period of delay. We feel, taking the facts and circumstances involved here, the appellant has been unable to give any reasonable, plausible and satisfactory explanation for seeking condonation of delay.

9. According to us, this is not such a case where the appellant has been able to satisfy our conscience to condone the delay of 1132 days, whence the appellant is guilty of being in a deep slumber.

10. In view thereof, there is hardly any merit in the submissions made by the learned counsel for the appellant for this Court to exercise its discretion in favour of the appellant.

11. We find no ground to condone the delay. Accordingly, the present application is dismissed.

RFA(OS) 17/2022 & CM APPL. 38128-38133/2022

12. In view of the orders passed in the CM APPL. 38371/2022, the appeal alongwith the pending applications, stands dismissed.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

OCTOBER 10, 2022/rr