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

% Judgment delivered on: 04.05.2023

+ CM(M) 535/2023 & CM APPL. 15807/2023

PARITOSH CHANDIOK Petitioner

versus

RAJIV ARORA Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rishi Manchanda and Mr. Siddharth Mullick, Advocates along with Petitioner-in-person.

For the Respondent : Mr. S.B. Pandey, Advocate along with Respondent-in-person.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 11.03.2020 passed in CS. No. 8195/2016 titled as "*Paritosh Chandiok vs. Rajiv Arora*", whereby the learned Trial Court had closed the right of the petitioner/ plaintiff to lead evidence.

2. Mr. Rishi Manchanda, learned counsel appearing for the petitioner/ plaintiff submits that 11.03.2020 was the first date for the purposes of recording of evidence when the proxy counsel appearing for

the main counsel had sought a short adjournment.

3. The learned Trial Court granted time only upto 02:00 PM to file the evidence by way of an affidavit and the same not being filed, had closed the right to lead evidence.

4. Mr. Manchanda, learned counsel submits that after the impugned order was passed, the country was reeling under the COVID-19 epidemic and, therefore, at the first available opportunity on 10.02.2022, an application seeking recall/ modification of the order dated 11.03.2020 was filed. By way of the impugned order, the said application was dismissed.

5. Mr. Manchanda, learned counsel submits that the learned Trial Court had passed the impugned order without even considering the merits of the application and only on the assumption that the application was hopelessly barred by law of limitation, that the same was dismissed.

6. Mr. Manchanda, learned counsel submits that the order sheets of the learned Trial Court passed from 27.09.2019 till 15.03.2022 have been annexed and the same would reflect that so far as the petitioner is concerned, there is no deliberate delay in filing the application. On that basis, learned counsel submits that the petitioner/ plaintiff be given one opportunity to record plaintiff's evidence.

7. *Per contra*, learned counsel appearing for the respondent submits by handing over the bench, a compilation of the order sheets passed by the learned Trial Court, to submit that even during the COVID period, the counsel for the plaintiff were appearing and, therefore, there was no reason why an application seeking recall/ medication could not have been filed during the interregnum.

8. Learned counsel also submits that there is no explanation as to why on 11.03.2020, evidence of affidavit of the petitioner/ plaintiff was not filed.

9. Learned counsel submits that there is no explanation, much less a sufficient or a reasonable explanation, for granting indulgence to the petitioner/ plaintiff and the impugned order as such is sustainable in law.

10. This Court has considered the submissions of the learned counsel for the parties as also perused the order sheets as placed on record by the petitioner as also handed over by the learned counsel for the respondent.

11. It is trite that the parties have a right of opportunity to lead evidence in support of their case before the learned Trial Courts, which is a right available to the parties, under law.

12. This Court has perused the order dated 11.03.2020 as also the impugned order dated 07.03.2022. After having perused the aforesaid two orders as also the compilation of orders placed on record from page 64 onwards, commencing from the order sheet dated 27.09.2019 when the issues were framed, it comes to fore that for various reasons not solely attributable to petitioner, the evidence could not be commenced. That coupled with the fact that the Supreme Court in **Suo Moto Writ Petition (C) No. 3/2020 “IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION”** had already granted amnesty to the litigants from the rigors of the Limitation Act, insofar as pleadings, evidences etc. were concerned for the period from 15.03.2020 to 28.02.2022. A further extension of 90 days was also granted.

13. Thus, even if there was a delay, the same would still not come in the way of the learned Trial Court to consider the application on its own

merits.

14. It is informed that the petitioner had already filed his evidence by way of an affidavit, which is recorded in the order dated 10.02.2022. The application which has been filed ought to have been considered on its own merits and not dismissed on the issue of limitation, specially keeping in mind the bar of limitation being suspended for the entire period from March, 2020 through till February, 2022 by the Supreme Court in the aforesaid judgment.

15. Having regard to the fact that the learned Trial Court had dismissed the said application merely on delay, which was not available to it, and in view of the aforesaid judgment of the Supreme Court, this Court is of the considered opinion that the impugned order ought to be set aside with a direction that the learned Trial Court re-hear the application seeking recall/ modification of the order dated 11.03.2020 *de novo*.

16. In view of the aforesaid, the petition is disposed of with no order as to costs.

17. All rights and contentions of the parties are reserved.

TUSHAR RAO GEDELA, J.

MAY 04, 2023

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