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

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Date of decision: 05th July, 2024+ **FAO 118/2024****SUNITA**

.....Appellant

Through: **Mr. Sandeep Kumar, Mr. Rahul
Kumar Jain, Advocates.**

versus

LALIT SANSANWAL

.....Respondent

Through: **Mr. Vijay Sansanwal, Advocate.****CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)****CM APPL. 28362/2024**

1. This appeal was initially taken up on 05.04.2024.
2. The appellant is defendant before the learned Trial Court and is aggrieved by order dated 03.01.2024 whereby the petition filed by her husband has been directed to be restored.
3. According to the learned counsel for appellant, the petition had been dismissed by learned Trial Court on 14.09.2022 due to non-appearance as well as for non-prosecution. However, while restoring, the learned Trial court has not given any reason as to why the petition was being restored despite the fact, nothing had been averred by the applicant before the learned Trial court as to what was the reason for non-prosecution. According to him, the petition was simply restored in respect of aspect related to non-appearance and there is no finding with respect to the issue of non-prosecution.
4. The present appeal is, otherwise, fixed for 26.07.2024 but, in between, the appellant has moved an application seeking early hearing.
5. With the consent of both the parties, the appeal has been taken up for final disposal as such. The next date of 26.07.2024 stands cancelled.



6. This Court has, very carefully, gone through the impugned order dated 03.01.2024 whereby the petition had been restored.

7. Learned Trial Court has given cogent reasons while restoring the petition. It was very much conscious of the fact that the applicant had not come up with the requisite reason but keeping in mind the overall facts and instead of taking a hyper-technical view and while taking note of the precedents that such restoration application should be dealt with liberally as right to represent one's cause before the court is a fundamental one, the application was allowed and the petition was restored to its original number and position.

8. Such approach of the learned Trial Court is judicious and commendable as well.

9. The grievance of the appellant herein is totally misplaced. The appellant seems to be concerned that because of non-filing of the affidavit in terms of *Rajneesh vs Neha* (2021)2 SCC 324, the matter is getting delayed. In such scenario, she can always make appropriate request before the learned Trial court and even pray that since the time granted in this regard is already over, her such application may be decided unilaterally by the learned Trial Court. However, merely because of the fact that there was some delay in filing such affidavit, the appellant herein cannot be permitted to grudge that the petition was not liable to be restored at all.

10. Viewed thus, I do not find any merit or substance in the present appeal. Resultantly, the same is hereby dismissed.

(MANOJ JAIN)
JUDGE

JULY 5, 2024/K