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

+ **FAO(OS) 63/2024 & CM APPL. 26697/2024**

SHIV KUMAR PAL & ORS.

..... Appellants

Through: Mr. Ankit Jain, Mr. Aditya Chauhan
and Ms. Divyanshu Rathi, Advocates

versus

DR. JAGDISH BANSAL THROUGH HIS ATTORNEY

MR. ANIL GOYAL

..... Respondent

Through: Dr. Surat Singh, Advocate with Mr.
Shivam Sachdeva and Mr. Chandresh
Jain, Advocates

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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15.05.2024

CM APPL. 26698/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

FAO(OS) 63/2024 & CM APPL. 26697/2024

1. Present appeal has been filed challenging the Order dated 10th April, 2024 passed by the learned Single Judge of this Court in I.A. 5, 6 and 7 of 2024 under Section 151 of the CPC in CS (OS) No. 1949/2011, whereby the applications filed by the Respondent-plaintiff seeking restoration of the suit/recall of the Order dated 13th December, 2022 and condonation of delay



in filing and refilling the restoration application, was allowed and the suit was restored.

2. Learned counsel for the Appellant states that the application for restoration was filed under Section 151 of the CPC. According to him, the application should have been filed under Order IX Rule 9 of CPC.

3. He states that the Respondent had made bald assertions in the application for restoration and nothing has been mentioned therein regarding the steps taken by the Respondent to pursue the matter after the date of knowledge of default. He states that the applications were not filed, signed and verified by authorized person and the same had been filed by the clerk of the learned counsel for the Respondent.

4. A perusal of the application reveals that the reason for the restoration is that the counsel for the Respondent could not keep track of the proceedings on account of shifting of his office. Consequently, this Court is of the view that the parties to the proceedings cannot be made to suffer merely because the counsel had failed to keep track of the proceedings.

5. Further, as the default had been committed by the counsel for the Respondent, the application for restoration has been rightly filed under the signature of the clerk of counsel for the Respondent. However, we make it clear that no further application shall be filed by either the clerk or any staff member or associate of the Respondent's counsel. In support of any application on behalf of Respondent, the power of attorney holder of the Respondent-plaintiff would have to be an individual, who is not associated with the office of the Respondent's counsel.

6. It is further settled law that nomenclature of the application cannot come in the way of substantial justice.



7. In view of the aforesaid, the present appeal along with pending applications stands disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 15, 2024/rhc