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

+ **RFA(COMM) 218/2024 & CM Nos.32676-77/2024**

M/S DEEP BLUE XPRESS PVT LTD APPELLANT

Through: Mr Himanshu Jain, Mr Rahul Gulia,
Ms K.M. Arti and Mr Siddharth Jain,
Advs.

versus

UPENDRA SURYABHAN PATEL RESPONDENT

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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28.05.2024

[Physical Hearing/Hybrid Hearing (as per request)]

CM No.32677/2024

1. Allowed, subject to just exceptions._

**CM No.32676/2024 [Application filed on behalf of the appellant seeking
condonation of delay of 99 days in filing the appeal]**

2. The above-captioned application is moved on behalf of the appellant seeking condonation of delay in filing the appeal. According to the appellant, there is a delay of 99 days.

3. The principal reason set out in the application for the delay is that the father of the counsel-on-record for the appellant suffered paralysis.



4. The delay is condoned, subject to the deposit of costs of Rs.7,500/- with The Delhi High Court Legal Services Committee, Account No.15530110008386, IFSC: UCBA0001553, UCO Bank Branch, Delhi High Court.

5. The proof of payment of costs will be produced before the learned District Judge on the date given above, i.e., 08.07.2024.

6. The application is disposed of in the aforesaid terms.

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7. This appeal is directed against the judgment and order dated 15.12.2023 and an earlier order dated 07.02.2023 passed by the learned District Judge (Commercial Court-02), South-East, Saket Courts, New Delhi.

8. The record discloses that the suit instituted by the appellant/plaintiff for recovery of Rs.5,18,037.31/- along with interest at the rate of 24% till the date of realization was dismissed *via* the impugned order dated 07.02.2023, *albeit*, for non-prosecution.

9. Thereafter, on 03.03.2023, the appellant/plaintiff had moved an application under Order IX Rule 4 of the Code of Civil Procedure, 1908 [in short, "CPC"] for restoration of the suit.

10. It appears that the restoration application was, finally, heard by the learned District Judge on 15.12.2023.

11. Learned counsel for the appellant/plaintiff concedes that he could not remain present even on that date. The reason that he proffers is that he was late in reaching the court on account of a traffic jam.



12. Having regard to the overall situation, we are inclined to give one more opportunity to the appellant/plaintiff.

13. Accordingly, the impugned judgment(s)/order(s) are set aside. The appellant/plaintiff and/or his counsel will appear before the concerned District Judge on 08.07.2024.

14. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MAY 28, 2024

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[Click here to check corrigendum, if any](#)