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

% ***Date of decision: 19th July, 2024***

+ **CM(M) 2945/2024 & CM APPL. 40103/2024**

RAMIN KUMAR MITTALPetitioner

Through: Mr. Abhimanyu with Mr. Pankaj
Arora, Mr. Paras Maheshwari,
Mr. Kunal Dhawan, Mr. Rahul
Manik, Mr. Parkash Chand, Mr. Ankit
Panwar, Advocates.

versus

BRIJ DWIVEDIRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner, who is plaintiff before the learned Trial Court, had filed a suit which was summary in nature.
2. The defendant (respondent herein) put in appearance and when the summons for judgment were taken out, the defendant submitted an application seeking leave to defend, *albeit*, with a delay of 19 days.
3. The learned Trial Court considered the application moved by the defendant whereby he had sought condonation of delay in filing leave to defend.
4. Such delay of 19 days has been condoned by the learned Trial Court.



5. Such order has been impugned by the petitioner/plaintiff.
6. According to the petitioner, the condonation had been sought while citing medical exigency and along with the application, the defendant had submitted two medical documents dated 18.08.2023 and 10.09.2023. Medical prescription dated 18.08.2023 indicates that defendant was suffering from loose motion etc. As per the medical certificate dated on 10.09.2023, it was certified that Mr. Brij Dwivedi (defendant/respondent) was suffering from acute gastroenteritis and swollen toe nail and was, accordingly, advised rest for two weeks.
7. It is contended that these certificates seem to have been procured and moreover the kind of ailment mentioned therein is general in nature which could have been cured by simple medication and did not incapacitate the defendant to not submit the application seeking leave within time. Therefore, relying on these medical prescription, the learned Trial Court should not have condoned the delay.
8. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it was found that findings were perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus*



Young Friends and Co. and Others: 2022 SCC OnLine SC 283.

9. In the present case, while exercising its discretionary powers as provided under Order XXXVII Rule 3(7) CPC, the learned Trial Court has chosen to exercise its discretion in favour of the defendant and, thereby, the delay has been condoned.

10. Needless to emphasize, the endeavour of the Court should be to decide the *lis* on merits instead of on technicalities and such provision should be used in liberal manner, particularly, when it is found that the conduct of the applicant does not suggest any malice or deliberate inaction.

11. Moreover, when the learned Trial Court has chosen to condone the delay, the supervisory Court should not disturb the finding merely on the premise that discretion should not have been exercised in favour of defendant.

12. Viewed thus, I do not find any reason to interfere with the impugned order in question.

13. Petition is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

JULY 19, 2024
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