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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 929/2019**

SURINDER KUMAR

.....Appellant

Through: None.

versus

VIJAY KUMAR

.....Respondent

Through: Mr. Rajesh Bhatia and Mr. Hemant
Kakkar, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **11.03.2025**

CM APPL. 51808/2024

1. This appeal is filed by the Appellant assailing the judgment and decree dated 12.07.2019 in Suit No. 16295/2016, whereby the Trial Court decreed the Suit for possession filed by the Respondent herein and dismissed the cross-objections filed by the Appellant. On 21.10.2019 while issuing notice, Court had stayed the execution on the plea of the Appellant that instead of Suit for possession, Respondent ought to have filed Suit for partition.

2. On 05.08.2024, as recorded in the order, there was no appearance on behalf of the Appellant even on the second call. Court noted that Appellant was unrepresented on several dates even in the past and accordingly dismissed the appeal along with pending application, for non-prosecution. Present application was filed on behalf of the Appellant under Order XLI Rules 17 and 19 read with Section 151 of Code of Civil Procedure, 1908 seeking restoration of the appeal. Notice was issued in the application on



05.09.2024, returnable on 06.11.2024, on which date, Appellant sought adjournment on the ground that his counsel was unable to appear due to a bereavement in his family and the application was adjourned for today.

3. None is present on behalf of the applicant to prosecute the application fully aware of the fact that the application is restoration of the appeal dismissed for non-prosecution. It is clear that applicant is not interested in restoration of the appeal. Accordingly, the application is dismissed in default and for non-prosecution.

4. Learned counsel for non-applicant/Respondent, on the other hand, on instructions, submits that in the execution petition filed on behalf of the Respondent/Decree Holder for execution of the judgment and decree dated 12.07.2019, possession of the property has already been handed over to Decree Holder by the applicant on 11.02.2025 and execution petition has been closed. This stand of the Respondent is taken on record.

JYOTI SINGH, J

MARCH 11, 2025
S.Sharma