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

% ***Date of Decision: 29th October, 2024***

+ **FAO 325/2022**

SH SURENDER SINGHAppellant

Through: **Mr. Ajay Mahla, Advocate.**

versus

SMT SHASHI BALA SHUKLA & ORS.Respondents

Through: **Mr. Neeraj Nagar with Mr. N.K. Chauhan, Advocates for respondent Nos.4 and 5.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL.64158/2024 (early hearing)

1. This application seeks early hearing of the matter.
2. Sh. Neeraj Nagar, learned counsel for respondent Nos.4 and 5 [defendant Nos.4 and 5 before the learned Trial Court] has appeared through video conferencing.
3. With the consent of both the sides, the application is allowed and the date is preponed.

FAO 325/2022 & CM APPL. 64157/2024 (under Section 151 CPC)

1. The issue raised in the present appeal is very short.
2. The appellant/plaintiff had filed a suit for specific performance.
3. When the above said suit was taken up by the learned Trial Court on 28.07.2015, none appeared from the side of plaintiff. Resultantly, observing that the plaintiff was no more interested in pursuing his case,



the suit was *dismissed-in-default*.

4. Subsequently, Plaintiff filed an application under Order IX Rule 9 CPC and in his such application, he claimed that on such date of hearing i.e. on 28.07.2015, there was a strike call and, therefore, his counsel could not mark his appearance before the learned Trial Court. It was also claimed that on account of his own ill-health, he, too, could not appear before the learned Trial Court and when they learnt that the suit had been *dismissed-in-default*, immediately steps were taken to ensure that suit gets restored to its original position and original number.

5. Such application was thus filed within twenty eight days of the dismissal of the suit.

6. However, it seems that the learned Trial Court got swayed by the previous conduct of the plaintiff and keeping his previous conduct, which reflected that he was not pursuing his suit with due diligence, the above said application seeking restoration has been dismissed.

7. It is contended that there was never any deliberate attempt to delay the matter, more so, when the plaintiff was, even otherwise, interested in ensuring that the suit filed by him reaches its logical end as quickly as possible.

8. It is submitted by Sh. Ajay Mahla, learned counsel for the appellant that there was a strike call in Rohini Courts and generally, whenever there is a strike call, most of the Courts refrain from passing any adverse order and since the case was civil in nature, he, thought that there would be no such order. It is submitted that, even otherwise, the application seeking restoration had been filed without any delay and in



case the suit is not restored, the appellant shall suffer irreparable loss and injury.

9. During course of the arguments, Sh. Narang, learned counsel for respondent Nos.4 and 5 submits that, without prejudice to his rights and contentions, he would have no objection if the appeal is allowed, *albeit*, subject to imposition of some cost.

10. Keeping in mind the overall facts and circumstances of the case and gracious concession given by Sh. Narang and also the fact that the above said application was eventually decided against the plaintiff after around seven years of the *dismissal of the suit in default* and the fact that in case the suit is not restored, the appellant/plaintiff would be totally remediless, the appeal is allowed, subject to cost of Rs.10,000/- to be payable to defendant Nos.4 and 5/their counsel.

11. The suit stands restored to its original position and number.

12. The parties are directed to appear before the learned Trial Court Court on 18th November, 2024 at 2:00 pm and learned Trial Court shall proceed further with the suit in accordance with law.

13. The appeal stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 29, 2024/st