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

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Decision delivered on: 16.02.2024+ **RFA(COMM) 60/2024 & CM Nos.9748-51/2024**

SOURAV NARULA

..... Appellant

Through: Mr Prashant Pathak, Mr Shantanu Dubey, Mr Ravi Pandey and Mr Anoop Pawar, Advs.

versus

NAVEEN KUMAR & ANR.

..... Respondents

Through: Mr Brijesh Kumar Sharma, Adv.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM No.9748/2024**

1. Allowed, subject to just exceptions.

RFA(COMM) 60/2024 & CM Nos.9749-51/2024

2. This appeal is directed against judgment dated 27.02.2023.

3. The record shows that respondent no.1/plaintiff had filed a suit for recovery of Rs.13,64,946/- at the rate of 24% per annum.

4. The record also discloses that respondent no.1/plaintiff was a proprietor of an entity named Texmach Consultants. Since respondent no.1/plaintiff had business relations with respondent no. 2 partnership firm, i.e., Narula and Company, he was approached by the appellant, who was one of the partners of respondent no. 2/partnership firm, for becoming a partner



in respondent no. 2/partnership firm.

5. Despite initial reluctance, respondent no. 1 agreed and an unregistered partnership deed dated 26.01.2020 was executed.

6. In the suit, respondent no. 1/plaintiff averred that he became a sleeping partner in respondent no. 2/partnership firm.

6.1 It is the case of respondent no. 1/plaintiff that he invested Rs.30,00,000/- in the respondent no. 2/partnership firm. Against the investment of Rs.30,00,000/-, respondent no.1/plaintiff was to receive Rs.1,50,000/- per month, equivalent to 5% of the invested amount.

7. The record reveals that Rs.30,00,000/- was claimed to have been transmitted to respondent no.2/partnership firm through RTGS/NEFT between 30.01.2020 and 22.06.2020.

7.1 It also appears that a certain part of the investment made by respondent no.1/plaintiff was transmitted to certain other entities, namely, SST Holidays and Narula Electronics.

7.2 The record also discloses that the agreed monthly payout was made for a while but it was stopped in September, 2020. That said, the appellant, it appears, has paid Rs.9,00,000/- to respondent no. 1/plaintiff.

7.3 It emerges from the record that the appellant, in the reply dated 30.11.2020, to the legal notice dated 06.11.2020, has admitted that respondent no. 2/partnership firm received Rs.25,00,000/-.

8. Furthermore, on 29.12.2020, respondent no.1/plaintiff resigned as a partner from respondent no. 2/partnership firm, and also passed on the said information, on 17.02.2021, to respondent no. 2's/ partnership firm's banker, i.e., Corporation Bank.

9. It is against this backdrop that respondent no.1/plaintiff, as indicated



above, instituted a suit for recovery of Rs. 13,64,946/- which was due and payable as on 22.02.2021.

10. It appears that pre-institution mediation was also attempted by taking recourse to Section 12A of the Commercial Courts Act, 2015 [in short, “2015 Act”]. Pre-institution mediation, however, failed, which led to the action being put to trial.

11. It is not in dispute that, upon issuance of summons in the suit on 01.09.2021, the appellant entered appearance on 22.09.2021. Since the appellant failed to file the written statement, the opportunity to do so was closed and the appellant was proceeded ex-parte *via* order dated 22.12.2021 passed by the trial court.

12. Given this position, respondent no.1/plaintiff moved the trial court to render a summary judgment under Order XIII A of the Code of Civil Procedure, 1908 [in short, “CPC”].

13. The record discloses that respondent no.1/plaintiff filed his affidavit of evidence with exhibits which revealed that the amount as claimed by him had been invested in respondent no. 2/partnership firm.

14. Interestingly, the trial court recorded that the bank statements, i.e., Ex.PW1/1 and Ex.PW1/2 established that Rs.30,00,000/- was remitted, as claimed, by the respondent no.1/plaintiff to respondent no.2/partnership firm.

14.1 Furthermore, the trial court also recorded that in the reply dated 30.11.2020 to the legal notice [Ex.PW1/5], the appellant had accepted that Rs. 12,00,000/- remained unpaid.

14.2 Thus, having regard to the fact that the appellant had been proceeded ex-parte and had not filed its written statement, the trial court accepted the



testimony of respondent no.1/plaintiff and, accordingly, decreed the suit for Rs.13,64,946/-. However, insofar as the interest was concerned, the trial court granted interest at the rate of 9% per annum *pendent lite* and till realization of the amount.

15. Even according to the appellant, there is a delay of 297 days in preferring the appeal and delay of 17 days in re-filing the appeal.

16. Interestingly, in framing the instant appeal, the appellant has arrayed the partnership firm, which was impleaded as defendant no. 1 in the suit action, as respondent no. 2.

16.1 Furthermore, the appeal, quite curiously, describes appellant no.1 as a company even while referring to respondent no. 2/partnership firm. The memo of parties shows that there is only one appellant arrayed in the appeal, who is an individual, and was arrayed as defendant no. 2 in the suit. The appellant, as indicated above, was a partner in respondent no. 2/partnership firm.

17. We have examined the assertions made in the application for condonation of delay. In the application for condonation of delay, it is averred by the appellant that he became aware of the impugned judgment and decree in “the second week of February”. This assertion is clearly, if not false, made with utter callousness as the impugned judgment and decree was rendered much later in the month, i.e., on 27.02.2023.

17.1 Furthermore, the explanation given for seeking condonation is that the earlier counsel had not drafted the appeal till the first week of July 2023, whereupon, there was a change in counsel brought about in second week of August 2023.

18. It is stated that the present counsel drafted the appeal on 28.08.2023



and sent the same for approval of the appellant. The record shows that the appeal was filed on 22.12.2023.

19. Even if we were to accept every averment made in the application for condonation of delay, there is no explanation given for delay between August 2023 and December 2023.

20. Given the conspectus of the case and the reasons put forth for seeking condonation of delay, we are not persuaded that this is a matter fit for condoning the delay.

21. The application for condonation of delay, i.e., CM No.9749/2024 is, accordingly, dismissed.

21.1 The net result would be that the appeal, application for condonation of delay in re-filing the appeal and the interlocutory application are rendered infructuous.

22. The appeal, application for condonation of delay in re-filing [CM No.9751/2024] and interlocutory application [CM No.9750/2024] are, accordingly, closed.

23. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 16, 2024

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