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

+ C.R.P. 288/2024, CM APPL.58074/2024 (stay)

ROHIT ARORA

.....Petitioner

Through: Mr. Anil Devlal, Advocate.

versus

NISHI CHOPRA

.....Respondent

Through: Mr. Debashis Mukherjee, Mr. Anand Shankar, Mr. Parma Nand and Mr. Amit Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

03.10.2024

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CM APPL. 58073/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The Revision Petition under Section 115 of CPC has been filed on behalf of the petitioner for setting aside the impugned Order dated 23.08.2024 *vide* which the Application under Order 9 Rule 13 CPC and the Application Section 5 of the Limitation Act, have been dismissed.
4. Learned counsel for the respondent has appeared on Advance Notice.
5. **Submissions heard.**
6. The plaintiff had filed a suit for Recovery of Rs.15,79,000/- in which the service was effected upon the respondent, who filed a memo of Appearance on 29.07.2021. Thereafter, the defendant/revisionist failed to appear and was proceeded ex-parte on 07.12.2021. Thereafter, the evidence



of the respondent was recorded and the ex-parte Judgment and decree dated 12.12.2022 was passed in the sum of Rs.10,15,000/- (which was subsequently amended to Rs.11,50,000/-) along with simple interest @9% p.a. from the date of payment till the realization, against the revisionist.

7. Aggrieved by the ex-parte Judgment and decree, the petitioner had filed an Application under Order 9 Rule 13 CPC along with Application under Section 5 of the Limitation Act, for setting aside the ex-parte Judgment and decree.

8. The learned Civil Judge vide its Order dated 23.08.2024 observed that in the Application under Section 5 of the Limitation Act, condonation of delay of 543 days was sought on the ground that the delay was caused due to negligence of the previous counsel. Further from 28.01.2020 till 30.11.2023, he was suffering from severe health issue and loss in business but his counsel did not care for it and did not pursue the suit properly.

9. The learned Civil Judge considered the contentions of the revisionist and observed that it has become a habit to litigants to put the blame for their non-action, upon their previous counsel. The counsel who had represented the revisionist in the trial, was the same who had appeared on his behalf in the Execution Petition for him till June, 2024. The revisionist had been duly served with the summons and was being represented by the counsel till 09.06.2022. Further, even if it is assumed that the learned counsel for the revisionist was negligent then to; the fact of ex-parte Decree came to his knowledge when he was served with the summons of the Execution Petition on 18.10.2023. Even thereafter, the Application under Order 9 Rule 13 CPC had been moved after ten months. The statutory period for challenging the ex-parte Judgment and decree is 30 days and there is no justification given



for the delay in filing the application under Order 9 Rule 13 CPC. It was thus, held that there was no merit in the Application under Section 5 of the Limitation Act and consequently, the Application along with the application under Order 9 Rule 13 CPC was dismissed.

10. Aggrieved by the impugned Order, the present Petition has been prepared.

11. Submissions heard.

12. Essentially, the petitioner has reaffirmed and reiterated the grounds for setting aside the impugned Order on the premise that he was suffered from loss of business since 13.02.2020. However, the counsel was engaged by him who appeared on his behalf on 29.07.2021 which is after February, 2020.

13. The Revisionist may have suffered financial difficulties but to claim that the non-appearance in the Court was on account of the negligence of the counsel or his ill health, is not borne out from his own documents. The medical records are from August, 2022.

14. The learned Civil Judge has therefore, rightly concluded that there is no ground disclosed in the Application under Section 5 of the Limitation Act, much less sufficient cause for condoning the delay in filing the Application under Order 9 Rule 13 CPC. There is no merit in the present Petition, which is hereby dismissed.

15. The Petition is disposed of accordingly. The pending application stands disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 3, 2024/RS