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

+ **FAO 124/2024**

SUNIL KILAM

.....Appellant

Through: Mr. Aditya Wadhwa, Mr.
Raunaq Bali and Mr. Arunav
Sarma, Advs.

versus

AMOD KHANNA & ORS.

.....Respondents

Through: None for R-1 and R-2.
Ms. Vidhi Goel and Ms. Bhavi
Midha, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

22.04.2025

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1. The hearing is being conducted through hybrid mode.
2. Having heard the learned counsel for the appellant and the learned counsel for the respondent No.3, this Court proceeds to decide the present appeal preferred by the appellant under Order XLIII Rule 1(c) of the Code of Civil Procedure, 1908 ['CPC'] read with Section 104 of the CPC, thereby assailing the impugned order dated 19.02.2024 passed by the learned ADJ-01, South-East District, Saket Courts, New Delhi, dismissing the application of the appellant under Order IX Rule 9 of the CPC.
3. In a nutshell, the appellant/plaintiff instituted a suit against the respondents/defendants seeking possession, declaration, permanent injunction, mesne profit and damages with respect to the subject property against the respondents/defendants, which came to be dismissed for non-appearance of the plaintiff/appellant by the learned



Trial Court *vide* order dated 18.05.2022. An application under Order IX Rule 9 of the CPC read with application under Section 5 of the Limitation Act, 1963, for condonation of delay in filing the aforesaid application was moved on 03.12.2022.

4. The said application came to be dismissed by the learned Trial Court *vide* impugned order dated 19.02.2024, the operative portion of which reads as under:-

“8 Perusal of the order-sheets of the underlined suit would reveal that the plaintiff last appeared before the court on 20.02.2021 through his Advocate through Video Conferencing. Thereafter, he did not appear on any of the subsequent dates and the matter was finally dismissed in default on 18.05.2022. The present application came to be filed on 03.12.2022. Similar grounds have been taken in the application for condonation of delay as well as in the application under Order IX Rule 9 CPC. The plaintiff/applicant has relied on the fact that after appearance on 20.02.2021, the next date was of 29.07.2021, however, due to second wave of COVID -19 pandemic and precarious health conditions of plaintiff, he could not contact his advocate and give instructions for next date of hearing. Therefore, advocate of plaintiff could not put in appearance. It is further the case of applicant that on last date of hearing i.e. 18.05.2022, the advocate of plaintiff could not appear as clerk of counsel by way of human error did not inform the Ld. Counsel for appearance in the matter and therefore, the suit got dismissed in default. He has relied upon the judgment of Hon’ble Supreme Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors., MANU/SC/0932/2013** and the judgment of Hon’ble High Court of Delhi in case **Road Master Cycle Ltd. Vs. Sushma Nangia, MANU/DE/1316/1998**.

9 In the judgment of Hon’ble Supreme Court, the principles for dealing with an application for condonation of delay have been elaborated. It is noteworthy to mention that as per which liberal, pragmatic, justice-oriented, non-pedantic approach has to be taken. It is further submitted that the term “sufficient cause” has to be understood in proper spirit. However, it is also mentioned that lack of Bonafide imputable to a party seeking condonation of delay is a significant and relevant fact. The Hon’ble Supreme Court also stated that the concept of liberal approach has to be balanced with reasonableness and a party cannot be allowed a totally unfettered free play for condonation of delay.

10 In the present case, apart from the above principles, provisions



of Order IX Rule 9 CPC have to be looked into. Order IX Rule 9 CPC requires that there must be “sufficient cause” for non-appearance when the suit was called for hearing and got dismissed due to nonappearance of applicant.

11 In the present case, the applicant has taken ground of his ill health effected by COVID-19 pandemic and the human error of clerk of Ld. Counsel for applicant.

12 Although the ground of ill health of plaintiff is taken, yet no document showing ill health or his inability to pursue the case on 29.07.2021 or thereafter have been placed on record. As far as the effect of COVID-19 pandemic for the past two previous hearings or the fact that clerk of the counsel made a human error in noting the date of 18.05.2022 is also not supported by any affidavit of the said clerk or counsel. Thus, what has come on record is only bare averments of the plaintiff and the same have not been supported by any material which have been placed on record.

13 Thus, no appropriate medical documents of the applicant/plaintiff or any other person or Ld. counsel or clerk of Ld. Counsel has been placed on record and the plaintiff has chosen to abstain from hearing on different occasions in the present case and Ld. Predecessor Court dismissed the case for non-prosecution on 18.05.2022. As the plaintiff has not been able to show sufficient cause within the meaning of Order IX Rule 9 CPC. The present application is devoid of merits and cannot be entertained.

14 In view of same, present application under Order IX Rule 9 CPC filed by applicant/plaintiff is dismissed.

15 Application be tagged with the main suit file and be consigned to record room after due compliance.”

5. The main plank of the submissions advanced by learned counsel for the appellant/plaintiff is that due to the Covid-19 Pandemic period, appearance could not be put in the matter diligently. It was urged that the matter espoused by the appellant and relief claimed in the suit are substantive relief and it cannot be assumed that the appellant was so negligent as to abandon a substantive relief in the present matter. It is urged that the default in appearance of the matter occurred for reasons beyond the control of the appellant and the application was thereafter filed after a delay of 113 days.

6. Learned counsel for the appellant in his submission relied on



decision in **Road Master Cycle Ltd. v. Sushma Nangia**¹, as well as, **SS Builders v. Sita Rani Ahuja**², passed by this Court.

7. *Per contra*, learned counsel for the respondent No.3 urged that no appearance had been put by or on behalf of the appellant prior to the date of the dismissal of the suit on 18.05.2022 and it was vehemently urged that no sufficient cause has been shown by the appellant to condone the delay.

8. It would be apposite to reproduce the order IX Rule 9 of the CPC which provides as under:-

“9. (1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh fruit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.”

9. In the cited case, **Road Master Cycle Ltd. (supra)**, it was held as under:-

“7. The words ‘sufficient cause’, occurring in above said Sub-rule (i) Rule 9 Order XI CPC, are of utmost significance. Though, the expression ‘sufficient cause’ has not been defined but it must mean a cause which is beyond the control at the party invoking the aid of the same. In other words any cause, which prevents a person approaching the Court within time, is sufficient. In doing so it is a test of reasonable man in normal circumstances which has to be applied. The test whether or not a cause’ is ‘sufficient’ is to see whether it could have been avoided by the party by exercise of due care and attention- Moreover, as per settled law, the provisions of Order IX Rule 9, CPC are procedural in nature and Therefore, the same should receive liberal construction so as to advance the cause of substantial justice rather than to frustrate or defeat the same.

8. In the light of the above settled legal position it is to be seen as to whether the applicant/petitioner has shown sufficient cause

¹ Manu/DE/1316/1998

² Manu/DE/0738/2003



within the meaning of Sub-rule (1) Rule 9 Order IX, CPC. In the application, filed on behalf of the petitioner, for the restoration of the Civil Revision Petition, dismissed in default of the appearance of the petitioner, it is stated that the lawyer of the petitioner who felt thirsty, went to the Bar Room for the purposes of drinking water and in between the case was called out and was dismissed in default. The correctness of the above facts is not disputed by the respondent also in reply which has been filed on behalf of the respondent to the above mentioned application. Bonafide mistake of the Counsel has been held to be a sufficient cause and a client cannot be made to suffer on that count.”

10. Further, in the other cited case, **SS Builders** (*supra*), it was held as under:-

“9. It is axiomatic that condensation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the Explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable Explanation whereas in certain other cases delay of a very long range can be condoned as the Explanation thereof is satisfactory. Once the Court accepts the Explanation as sufficient, it is the result of positive exercise of the discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal



remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala devi Jain v. Kuntal Kumari* MANU/SC/0335/1968: [1969]15CR1006 and *State of W.B. v. Administrator, Howrah Municipality*, MANU/SC/0534/1971: [1972]2SCR874a.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the Explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the Explanation. While condoning the delay the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have Incurred quite large litigation expenses.”

11. In view of the aforesaid proposition of law reverting to the instant matter, it is but apparent that a bulk of dates of hearing fell during the Covid-19 Pandemic period with which the entire world was engulfed during the period 2020 to 2022. There were a lot of unsettling things that were happening during the relevant time and the judicial cognizance of the fact can be taken, that even the District Courts in Delhi were not functioning to its full strength. There was lot of panic and alarm and the parties were trying to avoid coming out in public.



12. Having regard to the fact that before the Covid-19 Pandemic period, the matter was being diligently pursued by the appellant, it cannot be said that there was any *malafide* on the part of the appellant in approaching the Court belatedly. It is but apparent that the dependence of the appellant on their counsel was understandable, therefore adopting a pragmatic approach, the present appeal is allowed and the impugned order dated 19.02.2024 whereby the application under Order IX Rule 9 of the CPC has been dismissed alongwith application for condonation of delay under Section 5 of the Limitation Act, 1963, is hereby set-aside. The original suit filed by the appellant/plaintiff is ordered to be restored to its original number and position, subject to payment of cost of Rs. 25,000/- to the respondent No.3.

13. No one has appeared for the respondents No. 1 and 2.

14. At this stage, when the order was dictated, Mr. Kapil Gupta, Mr. Ravi Kumar and Mr. Abhijeet, learned counsels for the respondent No.1 appeared and they have also been apprised of the order passed by this Court.

15. The parties shall appear before the learned Trial Court, for further proceedings in accordance with law, on 02.06.2025.

DHARMESH SHARMA, J.

APRIL 22, 2025/sp/sa