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

% **Date of decision: 23rd April, 2025**

+ **FAO 107/2025**

ANJU TOMAR & ORS.

.....Appellants

Through: **Mr. Ishaan Michu, Adv.**

versus

STATE NCT OF DELHI & ORS.

.....Respondents

Through: **Ms. Nitika Bhutani, Panel
Counsel-GNCTD for R-1/
State.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The hearing is being conducted through hybrid mode.

CM APPL. 23630/2025 (For exemption)

2. Allowed, subject to all just exceptions.

3. The application stands disposed of.

FAO 107/2025

4. The appellants have preferred the present appeal under Section 104 read with Order XLIII Rule 1(A) of the Code of Civil Procedure, 1908 [“CPC”] seeking setting aside of orders dated 02.09.2024 passed by the learned District Judge-02, Shahdara District, Karkardooma Courts, Delhi [“**Trial Court**”], whereby application under Order IX Rule 9 of the CPC arising out of CS No. 173/2018 for restoration of the suit dismissed vide order 16.05.2023 filed by the appellant No.1 was dismissed.



5. Learned counsel for the respondent No.1 is present. No one is present for the respondents No. 2 to 6 despite sending advance notice.

6. Having heard the learned counsels for the parties present and on perusal of the record, a short question of law and facts is involved in the present matter and the instant appeal can be conveniently disposed of without any prejudice to the remaining respondents.

7. In a nutshell, the appellant No.1 along with her children i.e. the appellants No. 2 and 3 has instituted a suit seeking compensation on account of death of her husband due to medical negligence on the part of the Doctors and medical staff of respondent No.2. The suit was dismissed for non-appearance of the appellants and their counsel on 16.05.2023. It appears that an application under Order IX Rule 9 of the CPC was moved on behalf of the appellant, which also came to be dismissed passing the following order:

“Ld. LAC for the applicant/plaintiff submits that he has been recently engaged in the present matter from DLSA, Shahdara, Delhi and seeks time to file fresh address of the respondents in compliance of last order dated 29.04.2024.

Perusal of the last order shows that on 29.04.2024, the applicant was being represented by one counsel, Sh. Pratyaksh Kumar. However, no ground has been mentioned for changing the previous counsel, nor any NOC has been taken from him by the applicant before approaching the office of DLSA, Shahdara, Delhi.

This is an application for restoration of the petition, which was dismissed on the ground of non-prosecution by Ld. Predecessor Court vide order dated 16.05.2023. No plausible ground has been mentioned for not taking steps for service of other respondents since 29.04.2024 till the month of July, 2024 when the applicant has approached the office of DLSA, Shahdara, Delhi.

Today, the applicant is also not present.

However, son of the applicant namely Chaitanya Tomar is present. Perusal of the record shows that the instant petition was filed by the applicant Anju Tomar along with her two minor children namely Manshi Tomar and Chaitanya Tomar, who are now major.



But admittedly, the instant application has been filed only on behalf of the applicant Anju Tomar and no steps have been taken for impleading the children of the applicant as other applicants in the instant application, who were originally petitioner no.2 and 3 in the petition.

It seems that the petitioner is not interested to pursue even the present application, while the petition was earlier also dismissed for non-prosecution.

In view of the above, the instant application is dismissed for non-prosecution.

File be consigned to record room.”

8. Learned counsel for the appellants has alluded to the contents of the application under Order IX Rule 9 of the CPC moved on behalf of the appellant, which go to suggest that it was brought to the fore that appellant No.1 could not appear on 16.05.2023 as she was out of station and her counsel could not appear for certain reasons, which were not disclosed to her. It was also brought to the fore that the appellant No.1 had been taking diligent steps to get all the concerned tort-feasors summoned in the present matter including Dr. Amit and Dr. Tushar Aeron.

9. Learned counsel for the appellants has also submitted that the delay in filing the application occurred on account of gross professional misconduct on the part of her previous counsel, who was not intimating her the dates of hearing, and therefore, the appellant No.1 was constrained to approach District Legal Services Authority, Shahdara, and she moved the present application through her legal aid counsel.

10. 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.

¹ Manu/DE/1316/1998

² Manu/DE/0738/2003



11. 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 suit 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.”

12. 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 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.”



13. 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 ut 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.”

14. In view of the aforesaid proposition of law, reverting to the instant matter, it is but apparent that the appellant No.1 is a widow and she has no means of earning. She is pursuing the present matter diligently. There is nothing to suggest that she had any *malafide* intention to delay the proceedings in any manner. No prejudice would be caused to the respondents in case the delay in filing the application under Order IX Rule 9 of the CPC is condoned and the suit is restored to its original number and position.

15. Hence, in the interest of justice the present appeal is allowed and the impugned order dated 02.09.2024 is hereby set aside. The suit filed by the appellants is ordered to be restored to its original number and position.

16. The parties shall appear before the learned Trial Court for further proceedings on 16 May 2025.

DHARMESH SHARMA, J.

APRIL 23, 2025/Sadiq