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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 168/2024 and CM APPL. 30480/2024**

KRISHAN KUMARAppellant
Through: Mr. Ashok Kumar, Adv.

versus

YOGENDER KUMARRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
25.03.2025

1. Having heard the learned counsel for the appellant on the present appeal under Order XLIII Rule 1 read with Section 104 of the Code of Civil Procedure, 1908 [“CPC”] assailing impugned order dated 01.02.2024, whereby the application under Order IX Rule 9 of the CPC filed by the appellant/plaintiff, was dismissed by the Court of learned Additional District Judge-01, Patiala House Courts, New Delhi [“**trial Court**”], this Court has no hesitation in holding that the present appeal is bereft of any merits.

2. Learned trial Court dismissed the application under Order IX Rule 9 of the CPC for restoration of the suit for the reason that the same was filed along with an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 806 days. It is also borne out from the record that the appellant sought to put the blame on the previous counsel but the same did not find favour with the learned trial Court. In this regard, it would be expedient to reproduce the relevant observations made by the learned trial Court,



which go as under:

“Present: Ld. Counsel for the applicant (presence not given).
Non-applicant in person.

By way of this Order, this Court shall decide application under Section 5 of Limitation Act seeking condonation of delay in filing application Order IX rule 7 CPC effectively under Order IX Rule 9 CPC, seeking restoration of the suit.

The suit had been dismissed by the Ld. Predecessor of the Court on 28.08.2018. The applications were filed on 25.05.2021. The delay in filing the application for restoration of the suit is stated to be of 806 days though, the knowledge of dismissal of the suit is stated to have been gained only on 31.01.2021. It is averred that the applicant/ plaintiff had been suffering from various ailment and was dependent upon his previous counsel who misled him.

In support of the application, the applicant/ plaintiff has relied upon some copies of medical record.

The application has been vehemently opposed that the delay has not been explained and the blame has been shifted upon the previous counsel without any credible material. The Court has considered the submissions and material on record.

Ld. Predecessor of this Court dismissed the suit in default on 28.08.2018 at 2.10 PM. Issues in the matter had been framed on 03.11.2015 and the matter was pending for recording evidence. Plaintiff had partly examined PW-1 Smt. Sharmistha and PW-2 Ct. Ajay. On 07.07.2017, the matter was adjourned on the pretext that the plaintiff was bed-ridden with implantation of rod as he had met with an accident. The applicant has relied upon his medical records. The same are of the year 2014 and 2015. They are co-incident to the period when the suit had been instituted and do not justify the absence of the plaintiff in the year 2018 when the suit had been dismissed in default. The plaintiff had shifted the blame upon lack of diligence of his previous counsel. This is not substantiated. In ***Swarn and Anr. vs. Indu Wahi and Anr. (2017) SCC OnLine Del 1050 followed in Smt Suman Dahiya vs. Sh. Atma Ram Dahia in RCA No. 18/2023 decided on 24.03.2023*** it has been observed as under:

“.....6. The counsel for the petitioners/plaintiff has commenced his argument by stating that “the petitioners/plaintiffs have been let down by their earlier advocate”

7. Such grounds which prevailed with the Privy Council and other Superior Courts established in British India, which did not give weightage to and had no faith in the ability of the Indian lawyers, specially in moffusils to diligently protect the interest of their illiterate clients, ought not to continue to prevail in today's date and time in independent India.

8. Perhaps, it is because of the said grounds having been



allowed by the Courts to prevail that perfection and excellence is lacking in the legal profession and mediocrity has set in.

9. *It further appears that if the Courts and the legal process were to demand excellence and perfection, certainly the legal profession would reciprocate and mediocrity will give way to meritocracy. It is time to send a strong signal that mediocrity will not be tolerated in Courts. This will improve the legal system and help it achieve the targets. It is often said, bar is the mother of bench also.*

10. *I have in several orders dealing with petitions under Article 227 of the Constitution of India in this Roster been observing that the practice of a new counsel engaged, blaming earlier counsel, has become rampant and without the new counsel even checking up with the earlier counsel, whether the default was of the earlier counsel or of the litigant's own.*

Thereafter, even in ***Sanjay Kalra vs. State (2021) SCC*** ***aline 590***, the High Court is held as under:

“....10. No ground for review is made out. Unless the litigants before the Court, who always appear through Advocates, are bound by the actions of their Advocates, no effective proceedings can be taken before the Court, with the litigant replacing one Advocate with another, one after another, always taking the ground of mistake of the earlier Advocate. Admittedly, no proceedings have been taken against the earlier Advocate who is now sought to be blamed. No reason has been given, why the earlier Advocate could not prepare to argue the applications on 19th December, 2019. In fact, with Mr. Gaurav Dua, Advocate for the review applicant Payal Kapoor arguing on this basis only, the possibility of his successor Advocate blaming him in future, cannot be ruled out. The reasoning, of litigants being not made to suffer for the mistakes of their Advocates is of an era when litigants were unaware and the Advocates not so qualified. The position today is entirely different and such pleas, especially when found to be taken for oblique purposes, cannot be entertained today.

On the basis on material on record, there is insufficient material to show any indulgence to the applicant for non-appearance when the suit was dismissed in default.

Application under Section 5 of the Limitation Act stands dismissed and application Order IX Rule 7 CPC (effectively under Order IX Rule 9 CPC) are dismissed.

File be consigned to records.”

3. In summary, the appellant/plaintiff is woefully failing to show



that there was any sufficient cause for non-appearance of the appellant/plaintiff and his counsel on the date fixed. Evidently, there has been gross and inordinate delay on the part of the appellant/plaintiff in moving the application under Order IX Rule 9 of the CPC.

4. Accordingly, the present appeal is dismissed.
5. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MARCH 25, 2025 / *Sadiq*