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

+ **RFA 760/2023**

BHAGVAN DAS NARANG (D) THROUGH HIS LRAppellant

Through: Ms. Archana Gaur, Ms. Ridhima Gaur and Ms. Bhoomi Sharma, Advocates.

LR of the appellant is present in-person.

versus

**SUBHASH CHANDER ADHLAKHA (D) THROUGH HIS LR
AND ANR.Respondents**

Through: Mr. Sujeet Beniwal, Advocate with Mr. Hitesh Kumar, Advocate for R-1 and R-2.

Mr. Bharat Gupta and Mr. Vishesh Chauhan, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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07.11.2025

CM APPL. 48299/2023 (condonation of 08 days' delay in re-filing the appeal)

By way of the present application filed under section 151 of the Code of Civil Procedure 1908 ('CPC'), the appellant seeks condonation of about 08 days' delay in *re-filing* the regular first appeal.

2. Notice on this application was issued on 18.09.2023. However, no reply has been filed till date.
3. For the reasons stated in the application, which is duly supported by affidavit, the delay is condoned.



4. Accordingly, the application is allowed and disposed-of.

CM APPL. 48298/2023 (for condonation of 88 days' delay in filing the appeal)

5. By way of the present application filed under section 151 CPC read with section 5 of the Limitation Act 1963, the appellant seeks condonation of about 88 days' delay in *filing* the regular first appeal.
6. Notice on this application was issued on 18.09.2023. However, no reply has been filed till date.
7. Learned counsel appearing for the respondents submits, that they do not oppose the prayer made in the application.
8. For the reasons stated in the application, which is duly supported by affidavit, the delay is condoned.
9. The application is allowed and disposed-of.
10. The appeal is taken on Board.

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11. By way of the present regular first appeal filed under section 96 CPC, the appellant assails order dated 10.02.2023 passed by the learned Additional District Judge, North-District, Rohini Courts, Delhi in suit bearing CS No. 1718/2016.
12. Ms. Archana Gaur, learned counsel appearing for the appellant submits, that the appellant is a senior citizen; and the appeal may be considered urgently.
13. In view of the submissions made, the appeal is taken-up for hearing today itself.



14. The court has heard learned counsel for the appellant; as well as learned counsel for the respondents.
15. Ms. Gaur submits that a perusal of the impugned judgment/order would show, that the plaint filed by the appellant (plaintiff in the suit) was rejected *solely* on the ground available in Order VII Rule 11(b) and 11(c) of the CPC, holding that the appellant had undervalued the suit and had failed to file the requisite court fee. It is submitted that the issue of undervaluation of the suit arose at the stage of cross-examination of the appellant, at which stage an application was filed by the respondents under Order VII Rule 11(b) CPC, which culminated in the learned trial court passing order dated 17.12.2022, the relevant portions of which order read as under :

“Ld. counsel for the defendant in his application has stated that the plaintiff during his cross examination on 22.01.2020 has stated on oath that the market value of the suit property at the time of the filing of the suit was Rs. 80 lacs, whereas in his plaint, the plaintiff has valued the suit property for Rs. 38,00,320/- and has accordingly paid court fees of Rs. 41,850/- upon the same. He submits that the court fees is deficient and therefore the plaint be rejected under Order 7 rule 11 CPC.

Per Contra, Ld counsel for the plaintiff submits that it has been inadvertently stated in the cross examination dated 22.01.2020 that the property was for Rs. 80 lacs at the time of filing of the suit. In fact, the property at the time of cross examination was for Rs. 80 lacs and at the time of filing of the suit was of Rs. 38,00,320/-. It is further stated that the plaintiff is the dominus litus and can value the suit at any amount. Ld. Counsel for the plaintiff has stated that the application of the defendant is liable to be dismissed as the same is not supported by affidavit with proper provision and the same is filed at a belated stage when PE is going to be concluded.

Heard. Record perused.



This court is of the opinion that the plaintiff has under valued the suit property at the time of filing of the present suit and hereby called upon to make the payment of the deficient court fees within 30 days from today failing which the suit shall be rejected.

* * * * *

The application of the plaintiff is allowed and plaintiff is directed to make the payment of the deficient court fees within 30 days from today failing which the suit shall be rejected.”

(emphasis supplied)

16. Learned counsel for the appellant further draws attention to an application that was subsequently filed by the appellant under sections 149 read with 151 CPC, by which application the appellant sought further time of 02 months to make-up the deficiency in court fee. The averment in the application was the following:

“That on 17/12/2022, this hon’ble court has passed the order on an application U/O VII rule 11(b) of CPC and given time to comply within 30 days. But the applicant being the one of the L.Rs. is pursuing this matter, is a senior citizen is unable to comply with the order dated 17/12/2022 because his work is going slow and income is not sufficient, and hence, he is seeking time of two months more of the same. Thus, this humble application is before this hon’ble court to allow him accordingly.”

17. Next, learned counsel for the appellant points to the provisions of Order VII Rule 11(b) and 11(c) of the CPC, which are extracted below:

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

* * * * *

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;



(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

18. It is argued, that despite the limited nature of prayer made in the appellant's application under section 149 CPC, since the appellant had failed to comply with the direction contained in order dated 17.12.2022, by way of the impugned order dated 10.02.2023, the learned trial court has proceeded to dismiss his application under section 149 CPC and has rejected the plaint with the following observations:

"Ld. Counsel for the plaintiff has also moved an application under Section 149 CPC for extension of time in filing the deficient court fees. Copy supplied.

Heard.

*No ground is made for the extension of time in filing of the deficient court fees. The present suit is liable to be rejected in view of the order dated 17.12.2022. **The present suit is rejected. Let file be consigned to record room.**"*;

19. Learned counsel for the appellant submits, that once the appellant's contention, that he was *dominus litus* and was entitled to value the suit as he pleased, was rejected; and order dated 17.12.2022 was passed granting to the appellant 30 days' time to file the deficient court fee, and the appellant was ready and willing to do so; the learned trial court ought not to have rejected the appellant's application moved under section 149 CPC, by which the appellant had only sought extension of time for filing of deficient court fee.
20. Opposing the present appeal, learned counsel for the respondents however submits, that the appellant was deliberately trying to evade



payment of deficient court fee; and the application filed under section 149 CPC was only an effort to further delay the matter and evade the payment of requisite court fee.

21. Upon a conspectus of the submissions made by learned counsel for the parties, and after perusing the impugned order dated 10.02.2023, as also the earlier order dated 17.12.2022, this court is of the view that the present appeal deserves to be allowed *subject* to the following directions:

21.1. The appellant is granted further 06 weeks' time to file the deficient court fee, in terms of what was directed in order dated 17.12.2022 passed by the learned trial court;

21.2. Subject to the aforesaid, impugned order dated 10.02.2023 is *set-aside*, thereby restoring the suit to its original position and number before the learned trial court;

21.3. The learned trial court is directed to proceed with the matter from the stage at which it was dismissed, in accordance with law, once the deficient court fees is paid.

22. The appeal is disposed-of in the above terms.

23. Pending applications, if any, also stand disposed-of.

24. Furthermore, since the appellant has expressed that he does not have the resources to pay court fee before the learned trial court; and in view of the fact that substantial court fee has been affixed on the memo of appeal in the present case, it is directed that the court fee affixed on the present appeal be refunded to the appellant in its entirety.



25. The Registry is accordingly directed to draw-up the requisite certificate for refund of the entire court fee affixed on the present memo of appeal to the appellant, in light of section 13 of the Court Fee Act 1870, within 01 week of the appellant approaching the Registry for the purpose.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 7, 2025/ak