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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 37/2023, CM APPL. 8295/2023**

VIMLESH GUPTA

.....Appellant

Through: Mr. Faiz Imam, Advocate.

Versus

KULDEEP SINGH

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

20.01.2026

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1. Learned counsel for the Respondent had been appearing regularly since 18.09.2023, but none had appeared on the last date of hearing as well as today; he is proceeded *ex-parte*.
2. Second Appeal under Section 100 read with Order XLII of the Code of Civil Procedure, 1908 ('C.P.C.') has been filed on behalf of the Appellant for setting aside impugned Judgment dated 19.12.2022 passed by learned ADJ-01, New Delhi whereby the dismissal of leave to defend Application as filed beyond the specified time, by the Ld. *Senior Civil Judge*, was set aside and the case was remanded to consider the Leave to defend Application on merits.
3. **Brief facts** are that CS SCJ 688/19 under *Order XXXVII Rule 3(5)* C.P.C. was filed by the Plaintiff / Appellant against Respondent / Defendant for recovery of Rs.1,80,000/-.



4. *Learned Senior Civil Judge* vide Judgment dated 21.08.2021, dismissed the Application for ***Leave to Defend*** filed by the Respondent / Defendant as it was filed beyond the specified time and decreed the suit of Plaintiff / Appellant for a sum of Rs.1,80,000/-.

5. ***Execution Petition bearing No.400/2021*** dated 05.10.2021 was filed by the Decree Holder / Appellant against Respondent / Defendant, who then filed ***RCA No.27/2021*** before the Appellate Court of learned ADJ, who vide impugned Judgment dated 19.12.2022 *condoned the delay* in filing Leave to Defend Application and remanded back the case with directions to the learned Trial Court to take leave to defend Application on record and proceed with trial.

6. Aggrieved by the aforesaid impugned Judgment dated 19.12.2022, present Appeal has been filed by the Appellant/Plaintiff. Substantial questions of law as framed in the Appeal, are as under:

“I. Whether Learned Appellate Court has exceeded its jurisdiction by allowing Application for Leave to defend even beyond limitation period?

II. Whether Learned Appellate Court has exceeded its Jurisdiction by exercising its Jurisdiction against express statutory bar for exercise of power?

III. Whether Learned Appellate Court has exceeded its Jurisdiction by allowing Application for Leave to defend even without Application for condonation of delay?”

7. It is submitted that the Appellate Court exceeded its jurisdiction in allowing the leave to defend Application beyond the limitation period, in complete disregard to the statutory requirement. Though, it has been claimed that the benefit of COVID-19 Pandemic is required to be given, but the



summons for Judgment were served on 01.02.2020, while COVID-19 Pandemic restrictions were imposed w.e.f. 24.03.2020.

8. There were 52 days for the Respondent to file the Application for Leave to Defend before imposition of lockdown under COVID-19 Pandemic. Impugned Judgment of learned District Judge, giving the benefit of COVID-19 Pandemic, is misplaced and the delay in filing Leave to Defend Application could not have been condoned.

9. It is therefore, submitted that the impugned Judgment dated 19.12.2022 be set aside and the decree passed by learned Civil Judge be restored.

Submissions heard and record perused.

10. The Civil Suit dated 17.07.2019 under Order XXXVII Rule 3 (5) of C.P.C. was filed by the Plaintiff / Appellant against Respondent / Defendant for recovery of Rs.1,80,000/-.

11. Summons for appearance were issued and Respondent / Defendant entered his appearance within a period of 10 days. Thereafter, summons for Judgment were issued, but were received un-served. However, on 01.02.2020, learned Trial Court directed the Plaintiff to supply the copy of the Application of summons of Judgment to the Defendant. Subsequently, Defendant filed his leave to defend Application, on 14.01.2021. On the other hand, Plaintiff filed Application under Section 151 of C.P.C. for passing of Judgment and Decree.

12. The record further reflects that learned counsel for the Defendant / Respondent had appeared on 08.01.2021. Learned ADJ, in the impugned Judgment, observed that Defendant had explained in his reply that the summons, which were received by the Respondent, got misplaced and the



same were supplied afresh, on 01.02.2020.

13. Application on behalf of the Plaintiff / Appellant for summons for Judgment was moved in the Court and the copy of the same was received on behalf of the Defendant / Respondent on 01.02.2020.

14. Pertinently, in the Order dated 08.01.2020 of the learned SCJ, it was noted that learned counsel for the Defendant had submitted that he had already filed Leave to Defend Application, though the same was not getting reflected in the Order-sheets and was also not available on record.

15. It cannot be overlooked that there were COVID-19 restrictions, which got imposed from 20.03.2020. There was complete disruption of the Court proceedings and there was a complete lockdown for the first two months from March, 2020. The entire Court system came to a standstill. In these circumstances, learned District Judge had rightly observed that Defendant was entitled for benefit on account of COVID-19 Pandemic. It is also a fact that summons for Judgment was admittedly received on 01.02.2020 and the Leave to Defend Application was filed on 14.01.2021, which was again during the peak of COVID-19.

16. In the interest of the justice, extra-ordinary situation created by COVID-19 pandemic, entitled the Defendant to its benefit. Learned District Judge has rightly condoned the delay and referred the matter back to the learned Trial Court, to decide the Leave To Defend Application on merits and proceed with the Trial.

17. There is no merit in the Appeal and also there is no question of law, which has been raised in this Second Appeal. The grounds of challenge are purely on facts and are designed to challenge the discretion of learned District Judge, for which no ground exists.



18. Accordingly, the Appeal along with pending Applications, if any, is dismissed.

JANUARY 20, 2026/R

NEENA BANSAL KRISHNA, J.