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

+ RFA 123/2024, CM APPL. 10165-10166/2024 & 30776/2025

NITIN JAIN

.....Appellant

Through: Mr. Anuj Soni, Advocate

versus

LALIT KUMAR

.....Respondent

Through: Mr. Sudhir Gupta, Ms. Sonali Arora
and Mr. Mehul Chaudhary,
Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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24.02.2026

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (CPC) has been filed against the Judgment and Decree dated 18.08.2023 whereby the Leave to Defend Application of the Appellant has been dismissed from the ground of limitation and the Suit of the Respondent/Plaintiff has been decreed in the sum of Rs.5 lakhs alongwith simple interest @ 8% p.a.
2. A Suit under Order XXXVII CPC was filed by the Plaintiff for recovery of Rs.5 lakhs along with *pendent lite* and future interest @ 8% p.a. on the basis of a friendly loan for which Promissory Note dated 21.02.2022 was executed whereby the Defendant/Appellant had undertaken to repay the loan by 21.02.2023.
3. The summons for appearance was served upon the Appellant who filed an appearance on 02.06.2023. Thereafter, summons for judgment was



filed which was directed to be served on the Appellant. The summons for judgment were personally served on the Defendant on 19.07.2023. However, the Leave to Defend was filed only on 17.08.2023, which was supported with an Application for Condemnation of delay.

4. The sole ground given in the Application for condemnation of delay, was the illness of the mother and that there was none other to take care of the mother except the Defendant/Appellant.

5. In support along with the Application, a Medical Certificate of the Defendant, certifying that he was unwell from 20.07.2023 till 30.07.2023, was annexed.

6. The **learned Trial Court** has observed that after the service of summons for judgment on 19.07.2023, the Leave to Defend could have been filed till in 10 days thereafter. However, the Leave to Defend Application came to be filed on 17.08.2023. Even if the Medical Certificate of the Appellant was considered, then too, he was fit to join the duty from 31.07.2023. If even 10 days are counted from the said day, the Leave to Defend could have been filed till 10.08.2023, but was filed on 17.08.2023. There was no explanation for the delay of 07 days. The Application for condonation of delay was dismissed accordingly and the Suit of the Plaintiff/Respondent was decreed.

7. **Aggrieved by the said judgment**, the present Appeal has been filed wherein it is submitted that it has not been appreciated that Appellant would suffer grave injustice as there is sufficient cause stated in the Application about the illness of the mother and back problem of the Appellant, to explain the delay in filing the Leave to Defend Application. The liberal approach



should have been taken by the Court in condoning 07 days delay in filing the Leave to Defend Application.

8. The Order XXXVII Rule 3 CPC specifically empowers the Court to condone the delay. It is asserted that the Defendant was in need of money in the year around 2014 and had borrowed only Rs.20,000/- in cash. He has no liability to pay as Rs.20,000/- already stand paid and nothing more remains to be repaid. The figure of Rs.20,000/- in the Pro Note has been changed to Rs.5 lakhs. The Legal Notice was never received by the Appellant. Hence, it is submitted that the impugned Judgment and Decree dated 18.08.2023 be set aside and the Leave to Defend Application of the Appellant/Defendant be allowed.

Submission heard and record perused.

9. The learned District Judge has observed in detail, that the summons were served on 19.07.2023. The Medical Certificate relied upon by the Appellant to support his illness declared him fit from 31.07.2023, but the Leave to Defend was not filed till 17.08.2023. There is no explanation for this delay.

10. Moreover, though it was asserted that the mother was unwell, but no document filed in support thereof. The learned District Judge was right in dismissing the condonation Application as not disclosing any sufficient cause for delay.

11. There is no merit in the present Appeal, which is hereby dismissed, along with pending Applications.

NEENA BANSAL KRISHNA, J.

FEBRUARY 24, 2026

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