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

+ RFA 104/2021

M/S. AMAR ENTERPRISES

.....Appellant

Through: Mr. Lalit Choudhary, Ms. Pratyusha
Chatterjee, Advocates.

versus

M/S. MATA VAISHNO DEVI BUILDCON PVT. LTD

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **06.04.2026**

1. Regular First Appeal under Section 96 of the Code of Civil Procedure read with Order XLI of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellant against the Judgment/Order dated 02.11.2020 whereby the Memo of Appearance filed on behalf of the Appellant in a Civil Suit under Order XXXVII CPC for Recovery of Rs.12,50,000/- on the basis of cheque, was dismissed and the Suit was decreed.

2. As per the Complaint, the Appellant/Defendant had taken a sum of Rs.10,00,000/- for investment on behalf of the Plaintiff, for a period of ten months, at an interest of 2.5% i.e. Rs.25,000/- per month. He had given a post dated cheque of Rs.25,000/- starting from 07.06.2015 and also a cheque of Rs.10,00,000/- dated 07.06.2015 towards the payment of principal amount. As per the Agreement dated 06.05.2015, the Defendant had to refund the amount within ten months, but the same did not materialize.

3. The Defendant then got the Agreement extended for another period of



one year on the same terms and conditions, as the earlier Agreement dated 06.05.2015. The Agreement expired on 01.06.2017. The Plaintiff asserted that the Defendant used to pay interest with great difficulties and sometimes, he would not pay the interest, which reflected his *mala fide* intention.

4. The cheque dated 01.06.2017 for a sum of Rs.10,00,000/- was issued, with an assurance that the same would be honoured, but the Defendant requested the Plaintiff, not to present the same till further instructions are given.

5. After a lapse of one year and after much persuasions, the Defendant issued another Cheque dated 07.11.2018 for Rs.10,00,000/- in lieu of the earlier cheque, which was returned. The cheque, however, on presentation, was returned unpaid on 28.11.2018 with the endorsement of “insufficiency of funds”. The Legal Notice was sent to the Defendant, through e-mail on 11.12.2018 and also through WhatsApp on 19.11.2018 despite which, no amount was paid.

6. The Plaintiff filed a Complaint under Section 138 of the Negotiable Instrument Act. During the pendency of the case, the Defendant entered into a Compromise Deed dated 22.01.2019 whereby he issued two cheques dated 03.02.2019 and 03.03.2019 for Rs.1,25,000/- each, drawn on Bank of India, Malai Mandir, New Delhi, towards the interest part. However, these cheques on presentation, were also dishonoured.

7. The Suit under Order XXXVII CPC based on the Compromise Deed dated 22.01.2019, was filed.

8. The Summons for Appearance were sent to the Defendant/Appellant. The Summons were served on 14.12.2019. The Summons were also served through Process Server on 16.12.2019 on Sunder Zibbu, father of



SankalpZibbu, who had received the Summons. SankalpZibbu is one of the partners of the Defendant/M/s Amar Enterprises. It was thus, held by the learned District Judge that the Summons were duly served upon the Defendant/Appellant.

9. The Appellant had contended that the Summons were received through Speed Post only on 13.01.2020 and the Summons for Appearance were filed on 20.01.2020, which was within the period of ten days. Hence, it was asserted that the Appearance should have been taken on record.

10. The learned District Judge, however, held that the Summons for Appearance have been served on 14.12.2019 and 16.12.2019 and therefore, held that the Memo of Appearance was beyond the period of ten days and thereby dismissed the Appearance and decreed the Suit of the Plaintiff for Rs.12,50,000/- along with the interest @9% from the date of institution to the date of decree with costs.

11. **Aggrieved, the Appellant/Defendant has filed the present Appeal.** **The grounds of challenge** are that there was no inadvertent delay in filing the appearance. The Appellant is involved in many cases under Section 138 of the Negotiable Instrument Act and is under continuous legal guidance and keeps a close eye on all the legal matters. The *mala fide* and disingenuous conduct of the Respondent, is visible in making the parties get into a Settlement/Undertaking-cum-Affidavit under duress for Complaint Case under Section 138 of the Negotiable Instrument Act, for a much bigger amount than due without serving notice.

12. It has not been appreciated that the Process Server on the Summons allegedly taken by father of SankalpZibbu, is incorrect as the name of the father is not Sunder Zibbu but SurendraNath Zibbu. No Summons were ever



accepted by the father of the Appellant.

13. Moreover, the Appellant has made payment of Rs.50,000/- before the Court of learned Metropolitan Magistrate-03 (NI-Act), South East, Saket District Court, as mentioned in the Order dated 01.07.2019. The Appellant has been making the payment of installments from time to time in the Complaint under Section 138 of the Negotiable Instrument Act.

14. Reliance is placed on N. Balakrishnan vs. M. Krishnamurthy, (1988) 7 SCC 123 wherein it is stated that in the absence of any *mala fide* or deliberate delay as a dilatory tactic, the delay should ordinarily be condoned. Reliance is also placed on Babu Lal Yadav vs. M/s R.S. Yadav & Co. & Anr., decided by this Court on 22.02.2010.

15. There was an inadvertent delay of two days in filing the Appearance for which, a condonation Application shall be filed before the learned District Judge. A prayer is, therefore, made that the Impugned Judgment be set-aside.

Submissions heard and the record perused.

16. The learned District Judge has cogently observed that the Summons through Process Server, were served on 16.01.2019, through Sunder Zibbu i.e. the father of Sankalp Zibbu, who is one of partners of M/s Amar Enterprises/Appellant/Defendant. There is clear finding of the Summons being served on 16.12.2019, through Process Server and on 14.12.2019, through Speed Post.

17. The Appellant may have been served afresh through Speed Post on 13.01.2020 but the previous valid service cannot be overlooked. The Memo of Appearance not only was filed on 20.01.2020, which was clearly beyond the period of 10 days from the date of first service. The learned District



Judge was right in rejecting the Memo of Appearance.

18. It cannot also be overlooked that the impugned cheque has been issued pursuant to a Settlement dated 22.01.2019 in a Complaint Case under Section 138 of the Negotiable Instrument Act.

19. There is no merit in the present Appeal, which is hereby, dismissed and disposed of accordingly.

NEENA BANSAL KRISHNA, J.

APRIL 06, 2026/RS