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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 184/2023**

A.S.SURENDRAN NAIR & ORS.Appellants

Through: Mr.Jojo Jose and Ms.Sunita John,
Advocates

versus

MUTHOOT FINANCE LIMITED & ORS.Respondents

Through: Ms.Ritu Sobti, Advocate for respondent
No.1, respondent No.3(a), (b) & respondent No.4

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **08.04.2026**

1. The present appeal has been preferred under Order XLIII Rule 1(c) of the Code of Civil Procedure, 1908(hereinafter referred to as 'CPC'), by the appellants, who were the plaintiffs before the Trial Court, assailing the Order dated 21.02.2023 passed in Misc DJ No. 99/2021 by ADJ-03, South-East District, Saket Courts, Delhi.

2. Briefly stated, the appellants, had instituted a suit for damages, which came to be dismissed in default on 06.09.2021 due to their non-appearance. An application for restoration of the suit though filed under Order IX Rule 4 CPC was considered under Order IX Rule 9 CPC. The application was accompanied with an application under Section 5 of the Limitation Act seeking condonation of delay of 14 days. The Trial Court, however, dismissed the said applications vide order dated 21.02.2023, holding that no sufficient cause had been made out for non-appearance.

3. Learned counsel for the appellants submit that the suit was listed before the Trial Court on 06.09.2021 at item no.3 in the cause list. When the counsel inquired, he was informed that the matter had already been taken up



and was adjourned to 11.10.2021, which date was entered by him in his court diary. However, upon appearance on 11.10.2021, it was informed that the matter has already been dismissed in default on 06.09.2021. The delay of 14 days in filing the application for restoration was sought to be condoned by contending that it was filed immediately on coming to know of the dismissal and it took some time to prepare and file the restoration application.

4. The respondents/defendants contested the application by claiming that the appellants were not diligent in pursuing the suit and even on previous dates i.e., on 06.07.2020, 19.03.2021 and 03.05.2021, the appellants remained unrepresented before the Trial Court.

5. Learned counsel for the appellants contends that the non-appearance was neither deliberate nor intentional, but occurred in the backdrop of COVID-19 and that though the counsel appeared on 06.09.2021, he was wrongly informed that the matter was adjourned to 11.10.2021, on which date when he appeared, then only he became aware of the dismissal of the application i.e. on the previous date.

6. Learned Counsel for the respondents has reiterated the submission that the appellants had adopted a casual approach and failed to show due diligence or alacrity in pursuing their case.

7. A perusal of the impugned order would reveal that the same was passed primarily on account of the non-appearance of the counsel of the plaintiffs on the relevant dates. However, in the said period proceedings were taken up in a restrictive manner due to COVID-19. Though counsel for the respondents appeared, counsel for the appellants has furnished reasonable explanation for his non-appearance during this period.



8. It is relevant to note that the Supreme Court, In Re: Cognizance for extension of limitation in Suo Motu Writ Petition(Civil) No.3 of 2020 (Order dated 10.01.2022), bearing in mind the difficulties faced by the litigants, directed that the period between 15.03.2020 and 28.02.2022 shall stand excluded for the purpose of computing limitation.

9. The Supreme Court in Improvement Trust, Ludhiana v. Ujagar Singh¹, has held that while considering an Application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances.

10. In the present case, the restoration application was filed with only a delay of only 14 days, for which an application under Section 5 of the Limitation Act was filed explaining and seeking condonation of the said delay.

11. This Court is of the considered opinion that the appellants have been able to make out their case, as the default was during Covid-19 and the reasons stands sufficiently explained by them.

12. Considering the aforesaid facts and circumstances, the present appeal is allowed and the order dated 21.02.2023 is set aside.

13. Consequently, the suit is restored to its original position and be listed at the first instance before the concerned Court on 30.04.2026.

MANOJ KUMAR OHRI, J

APRIL 8, 2026/pmc

¹ (2010) 6 SCC 786