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

+ RFA 441/2022, CM APPL. 40312/2022

M/S SHIV OM ENTERPRISES THROUGH ITS PARTNERS

.....Appellant

Through: Mr. Avtar Singh, Advocate

versus

M/S GANPATI SPINFAB LTD THROUGH

ITS DIRECTOR SH NEERAJ RAGHAV

.....Respondent

Through: Mr. P.K. Rawal, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

03.02.2026

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1. Regular First Appeal under Section 96 read with 151 CPC has been filed against which, dated 28.01.2019 whereby *ex parte* decree in the sum of Rs.8.5 lakhs alongwith interest @ 18% p.a. with effect from 15.07.2015 till the date of realisation was passed against the Appellant.
2. The Appeal is supported with **CM Appl. 40312/2022 under Section 5 Limitation Act for condonation of delay.**
3. It is submitted in the Application that the case of the Appellant was being handled by Mr. Anand Maheshwari, Advocate. The entire facts had been explained to the learned Counsel, who assured the Appellant that the Suit shall be dismissed. On 21.01.2019, the Counsel of the Appellant was not present in the Court.
4. Appellant-Kishan Ahuja, who was present in person, requested the Court for some time for the Counsel to come in a few minutes. Despite this,



the learned Court heard the arguments and reserved the matter. The judgement was pronounced on 28.01.2019.

5. The defendant was utterly suddenly surprised on 07.12.2021, when he received the summons of execution of the Decree. He contacted one of his relatives, Sh. R.P. Arora, Advocate, who opined that the learned Counsel had colluded with the Plaintiff and got the fraudulent *ex parte* Decree. Sh. R.P. Arora also opined that it seems that the Plaintiff has obtained the decree by suppression of material facts.

6. The Appellant made an attempt to obtain certified copies of the record. It transpired that the Court was abolished and the Application could be filed only on 12.01.2022 and the certified copies were received on 24.01.2022. The Court was not functioning on full strength, and the Supreme Court had extended exempted the period from 15.03.2020 till 28.02.2022 from limitation and had granted at least 90 days w.e.f. 01.03.2022 to file the Suit.

7. The Appellant filed the Application under Order IX Rule 13 CPC within a period of limitation. However, the Application was dismissed by the learned Court on 25.07.2022, on the ground that the Application was not maintainable.

8. It is submitted that no part of the delay was on account of the fault or negligence. The delay till the receipt of notice of Execution, was because of the collusion and misinformation by the Counsel and after due pursuing of the remedy which has failed to produce the desired result, on account of misguidance by the Counsel, who was in collusion with the Respondent.

9. The Appellant has not been negligent, but victim of fraud played on them by their Counsel. Therefore, the Appellant has sought the condonation



of delay from 28.01.2019 to 07.12.2021. Further, the delay from 28.02.2022 till 25.07.2022 is also sought on account of the pendency of the Application under Order IX Rule 13 CPC.

10. It is, therefore, submitted that the delay of 480 days in filing the present Appeal, be condoned.

11. Learned Counsel on behalf of the Respondent has submitted that the summons of the Suit were duly served upon the Defendants on 17.03.2018. The Defendants No. 2 to 5 proceeded *ex parte* on 24.04.2018, while Defendant No. 1 proceeded *ex parte* on 04.06.2018. Thereafter, the matter was listed for *ex parte* evidence, which was duly led by the Respondents. However, the vakalatnama of the learned Counsel on behalf of the Appellant, was filed on 19.11.2018, who also cross-examined PW-4.

12. Pertinently, as submitted by the Appellant himself, he was present in the Court on the date when the final argument was concluded on 16.01.2019. He himself has stated that the decree was passed after one week, i.e. on 28.01.2019.

Submissions heard and record perused.

13. From the entire narrative, it is evident that the Appellant not only was aware about the pendency of the Suit, but had even appeared in person as well as through Counsel. It is unfortunate for the Appellant to put all the blame on the learned Counsel and to allege that there was a fraud played by the Counsel for the Appellant.

14. There is no explanation forthcoming about the Appellant's silence from the date of decree, i.e. 28.01.2019 till November, 2021, on which date he claims to have come to know about the decree, on receiving summons of the Execution. There is an absolute negligence and deliberate non-



appearance on behalf of the Appellant, who has tried to cover his own negligence by putting the blame on the learned Counsel, which is indeed not acceptable.

15. Thereafter, the Application under Order IX Rule 13 CPC has been filed on 14.02.2022 after a delay of 03 years from the date of judgement, i.e. 28.01.2019 which also got promptly dismissed on 22.07.2022. Even thereafter, the Appeal has been preferred on August, 2022.

16. There is not only an inordinate delay in filing the present Appeal, but also there is no cogent explanation whatsoever for condonation of delay. It is the Appellant who also been appearing before the learned Court, despite which he has not participated or taken due steps in time.

17. There is no ground for condonation of delay of 480 days in filing the present Appeal. The Application is therefore, **dismissed**. Consequently, the Appeal is also **dismissed**.

18. *Vide* Order dated 27.04.2023, the Respondent had withdrawn Rs.8.75 lakhs that had been earlier deposited by the Appellant and had furnished the FDR as a security. The said FDR be returned to the Respondent. The Respondent is at liberty to seek the Execution for recovering of the balance amount, if any.

19. The Appeal is accordingly disposed of.

20. Learned Counsel for the Appellant has given a cheque towards the cost of Rs.20,000/-, but he undertakes to give a new cheque with the correct information during the course of the day.

NEENA BANSAL KRISHNA, J.

FEBRUARY 3, 2026

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