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

+ **RFA 446/2024, CM APPL. 40933/2024**

SANJAY RASTOGI

.....Appellant

Through: Mr. Somnath Bhattacharya and
Mr. Pradeep Tripathi, Advocates

versus

SUNIL RASTOGI & ORS.

.....Respondents

Through: Mr. J.K. Singh, Ms. Harshita Singh
and Ms. Anjali Kumari, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **25.02.2026**

CM APPL. 41903/2024

1. Application under Section 5 of Limitation Act read with Section 151 of the Code of Civil Procedure, 1908 (CPC) has been filed seeking condonation of delay of 250 days in filing the Appeal.
2. The Appellant submitted that the *ex parte* Judgment dated 04.08.2023 has been passed against which an Application under Order IX Rule 13 CPC *vide* Misc. Case No. 167/2023 was filed, but the Application was dismissed on 31.05.2024 after which, the present Appeal has been filed.
3. It is submitted that the delay is on account of pursuing the remedy under Order IX Rule 13 CPC. Therefore, prayer is made that the delay may be condoned.
4. For the reasons given in the Application, the delay is condoned.
5. The Application is allowed and disposed of accordingly.

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6. Regular First Appeal under Section 96 read with Order XLI of the



Code of Civil Procedure, 1908 (CPC) has been filed against the judgment and decree dated 04.08.2023 whereby the Suit of the Plaintiff/Respondent for Recovery of Rs.16 lakhs with interest, has been decreed.

7. The perusal of the record shows that the Plaintiff/Respondent had filed a Suit under Order XXXVII CPC for recovery of Rs.16 lakhs. However, at the time of filing of the Suit itself while Endorsement dated 22.11.2019, Order XXXVII CPC was crossed and it was stated to be an ordinary Suit.

8. The summons thereafter, were issued to the Defendant/Appellant for settlement of issues till September, 2022. However, thereafter the summons were issued under Order XXXVII CPC for appearance and when the Appellant failed to appear, the Suit was decreed under Order XXXVII CPC.

9. From the record itself, it is evident that the Suit was an ordinary Suit and not under Order XXXVII CPC. Therefore, the decree of the Suit under Order XXXVII CPC is patently illegal.

10. In view of the aforesaid, the impugned Judgment is hereby set aside and the case is remanded back to the learned Trial Court to proceed as an ordinary Suit for Recovery.

11. The parties are directed to appear before learned District Judge, East, Karkardooma Courts, on 10.03.2026.

12. The Defendant is directed to file the Written Statement within the time provided under CPC.

13. The Appeal along with pending Application, is accordingly disposed of.

NEENA BANSAL KRISHNA, J

FEBRUARY 25, 2026/N