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

+ RFA 951/2023, CM APPL. 62043-62044/2023 & 62046/2023

NAMO NARAYAN JHAAppellant

Through: Appearance not given.

versus

TARANNUMRespondent

Through: Mr. Noor Alam, Adv.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **21.01.2026**

CM APPL. 62044/2023

1. Application under Section 5 of Limitation Act, 1963 has been filed on behalf of the Appellant seeking condonation of delay of 2347 days in filing present Regular First Appeal to challenge *ex-parte* Judgment dated 15.03.2017 passed by learned ADJ-04, South-East District, Saket Courts, New Delhi in Civil Case No. 7915/16.

2. It is submitted in the Application that after the Application under Order IX Rule 13 of C.P.C. was dismissed on 25.11.2022, he filed Application under Section 151 of C.P.C. for restoration of Application under Order IX Rule 13 of C.P.C., which also got dismissed on 21.10.2023. It is claimed that the Appellant was not served with the summons in the Civil Case No. 7915/16 and an *ex-parte* decree was passed. Appellant received summons in Execution Case No.447/17.

3. Application under Order IX Rule 13 of C.P.C. along with Application under Section 5 of Limitation Act, 1963 was filed on 02.11.2018, but the



same got dismissed in default and non-prosecution on 25.11.2022. Thereafter, Application under Section 151 of C.P.C. for restoration which also got dismissed on 21.10.2023.

4. It is submitted that the Appellant came to know about the Order of dismissal of Application under Order IX Rule 13 of C.P.C. in default on a later date, since the mother of learned counsel for the Appellant, who was in critical condition, was initially admitted in the Hospital on 24.12.2022 and after long illness, she died in Hospital on 15.03.2023. Therefore, learned counsel for the Appellant was disturbed due to sudden burden that has fallen on his family.

5. Non-appearance of the Counsel cannot be a reason for non-suiuting of the Appellant. It is therefore, submitted that the delay of 2347 days in filing present Regular First Appeal, be condoned.

6. **Learned counsel for the Respondent** has contested this Application on the ground that there is no timeframe or cogent explanation given for delay in filing the Appeal. Appeal is patently barred by the time and liable to be dismissed.

Submissions heard.

7. Present Regular First Appeal has been preferred by the Appellant challenging *ex-parte* Judgment dated 15.03.2017 passed by learned ADJ-04, South-East District, Saket Courts, New Delhi in Civil Case No. 7915/16. As per submissions made in the Application itself, Application under Order IX Rule 13 of C.P.C. got dismissed on 25.11.2022.

8. Only explanation forthcoming in the entire Application is that mother of learned counsel for the Appellant fell sick in 2022 and it was the Counsel, who was not able to pursue the matter. However, delay is from 2017 till



2023, when present Appeal has been preferred. There is not a whisper in the Application as to when the Applicant came to know about the *ex-parte* decree.

9. As per his own submissions, the Appellant came to know about it in the year 2018, when he filed Application under Order IX Rule 13 of C.P.C. But this was also not pursued and it got dismissed in default and for non-prosecution.

10. Considering the contents of the Application and conduct of the Appellant, only irresistible conclusion is that there is no cogent reason disclosed in the Application for condoning the delay.

11. Accordingly, Application is dismissed.

12. Present Regular First Appeal is consequently dismissed, being barred by time. Pending Applications also disposed of.

NEENA BANSAL KRISHNA, J.

JANUARY 21, 2026/R