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22.07.2003

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Present: Mr.B.R. Sharma for the Appellant.
Mr.Y.K. Saxena for the Respondent.

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FAO No.199/2001

The respondent had filed suit for recovery of Rs.2,09,329/- against the appellant. Despite adjournments written statement was not filed and the Court, therefore, by an order dated on 2.8.1999, passed a decree under Order 8 Rule 10 CPC against the appellant. This decree was sought to be set aside by the appellant by filing an application under Order 9 Rule 13 CPC. There was delay of three days in filing the application and the Trial Court by the impugned order dismissed the application on the ground of the same being barred by limitation. This order has now been challenged by the appellant by filing the present appeal.

One of the grounds taken by learned counsel for the respondent to oppose the appeal is that no application was filed by the appellant for condonation of delay and consequently the Trial Court was justified in dismissing the application for setting aside ex-parte decree. There is no doubt that the party who is seeking to have the delay condoned is required to explain the reasons for such delay in filing the application and apply to the Court for condonation of delay, however, it is not mandatory that such an application must be in writing. The party in the facts of a case can also make an oral prayer for condonation of such delay. The Trial Court in the instant case has not considered this aspect of the matter and has dismissed the application for setting aside ex-parte decree in a routine manner only on the ground that the application was barred by limitation. The order of the Trial Court, therefore, cannot be sustained.

Instead of remanding the case to the Trial Court for deciding the application on merits, learned counsel for both the parties have submitted that the

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been compared and the digital data is as per
the physical file and no page is missing.

application under Order 9 Rule 13 CPC may also be disposed of by this Court on the basis of material on record. I have gone through the application as well as the Trial Court record and have also heard learned counsel for the parties and I am satisfied that the delay in filing the application was not intentional and sufficient cause was shown for condoning the delay. Even otherwise there was only three days delay in filing the application and it was not such an inordinate delay which should have non-suited the appellant. Appellant has given reasons as to why the application was filed late and they in my view, are sufficient to condone the delay in filing the application. I, accordingly, condone the delay in filing the application under Order 9 Rule 13 CPC.

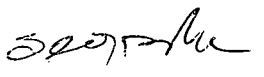
Coming now to the application under Order 9 Rule 13 CPC, I find that the advance copy of the written statement had already been supplied to counsel for the respondent and written statement, duly signed by the defendant, was also handed over to the counsel for filing in Court. Written statement could not be filed in Court on the day fixed for the purpose as the counsel could not reach the Court in time. This, in my opinion, was sufficient cause for setting aside the ex-parte decree.

I, therefore, allow this appeal, set aside the impugned order and also set aside the ex-parte decree subject, however, to payment of Rs.10,000/- as costs payable to the plaintiff. The amount deposited in this Court by the appellant pursuant to the orders dated 23.4.2001, shall remain deposited in this Court till the disposal of the suit and the office is directed to place the same in a fixed deposit initially for a period of two years. The appellant is directed to file the written statement on the date fixed by this Court for appearance of the parties before the Trial Court. In case the written statement is not filed within the time granted by this Court, the Trial Court will be at liberty to proceed against the defendant/appellant in accordance with law.

The trial court file be sent back immediately.

Parties are directed to appear before the Trial Court on 3rd September,
2003.

July 22, 2003
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(S.K. MAHAJAN)
JUDGE

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM 3984/2013 in FAO 199/2001

M/S.VICTORIA FOODS P.LTD. Appellant
Through Mr.Rajiv, Adv.

versus

M/S.MOONLIGHT PRINTERS & PAPER Respondent
Through Mr.Rajesh Mahindru, Adv.

CORAM:**HON'BLE MR. JUSTICE V.K. SHALI****ORDER**

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01.05.2013

1. The learned counsel for the parties have agreed that the amount which has been deposited in the present appeal as well as the bank guarantee which has been furnished by the appellant may be made subject to such orders as may be passed by the appellate Court.
2. In view of the statement made by both the learned counsel for the parties, the amount/bank guarantee which has been furnished to this Court is permitted to be released to the respondent, subject to such orders as may be passed by the appellate Court.
3. The application stands disposed of.


V.K. SHALI, J**MAY 01, 2013**RN
M.B*For CM 14298/13 (Director)*

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO 199/2001****M/S.VICTORIA FOODS P.LTD.**

..... Appellant

Through : None

versus

M/S.MOONLIGHT PRINTERS & PAPER

..... Respondent

Through : Mr. Rajesh Mahendra, Adv.

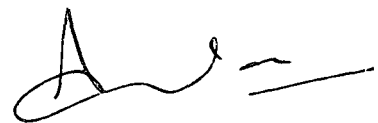
CORAM:**HON'BLE MR. JUSTICE A.K. PATHAK****ORDER**

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19.08.2014**CM Appl. No. 13326/2014 (for-release the amount)**

Advance copy has already been served on the appellant. In view of the settlement arrived at between the parties before the Appellate Court on 5th July, 2014, pursuant whereof appeal has already been disposed of, it is ordered that ₹1,05,000/- lying deposited in this Court be released to the respondent together with interest accrued thereon, if any. As regards bank guarantee is concerned, the same is discharged and returned to appellant.

Application is disposed of in the above terms.

**A.K. PATHAK, J.****AUGUST 19, 2014**

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