

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

+ **FAO 144/2012**

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Date of Decision: 30.03.2012

KAMLESH

..... Appellant

Through :Mr Rajuddin Khan, Advocate

versus

JITENDER & ORS

..... Respondent

Through :None.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J. (ORAL)

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CM No. 5915/2012 (exemption)

Exemption as prayed for is allowed subject to just exceptions.

FAO 144/2012

1. In the present appeal, the appellant has challenged the impugned order dated 31.01.2012 passed by the learned ADJ, Delhi, by which application under Order 9 Rule 9 CPC of appellant for restoration of suit as well as application under Section 5 of Limitation Act are dismissed.
2. The appellant i.e. plaintiff before the learned trial court had filed a suit under Order XXXVII of CPC for recovery of ₹ 5,00,000/- against

the respondents. Initially the appellant/plaintiff had taken steps to serve the respondents, but the respondents could not be served and the matter was adjourned to 09.05.2005 for taking further steps for serving the respondents. It is alleged that since then the appellant/plaintiff had fallen sick due to which she could not take steps and asked her husband to do the needful for the said date. Ultimately, the suit was dismissed for non-appearance on 09.05.2005. It is alleged that from May, 2005 to 15.01.2012 i.e. for a period of about 6½ years, the appellant had fallen sick and her husband did not tell her anything about the matter as the respondents are his brothers and on 16.01.2012 when the appellant contacted her counsel, she had come to know that the suit was dismissed in default on 09.05.2005. Immediately thereafter on 19.01.2012 the appellant took steps for restoration of the suit and filed application under Order 9 Rule 9 CPC along with application under Section 5 of Limitation Act. The said applications were dismissed by the learned trial court on the ground of limitation.

3. The learned counsel for the appellant has contended that the appellant derived the knowledge of the dismissal of the suit only on 16.01.2012 when she contacted her counsel and prior to that she was under the belief that her husband is pursuing the matter and, as such, she

did not contact the counsel. It is stated that even the medical certificates for the aforesaid period showing her ailment were filed but the same were not appreciated by the learned ADJ and the applications were dismissed.

4. I have perused the impugned order as well as the medical certificates placed on record. The medical certificates are in the form of printed slips issued by a private doctor. No specific treatment papers have been filed by the appellant. Even the prescription of medicines has not been filed. The medical certificates also record “Not for medico-legal cases.” The medical certificates appear to be procured one for the purposes of restoration of suit. Even if the same are taken into consideration, the same do not show that the appellant remained sick throughout the period of 6½ years as is alleged. There are gaps of 4-6 months in each year for which there is nothing to show that the appellant was sick. Further, nothing prevented her from contacting her advocate on telephone to know the status of her case. The appellant has deliberately not pursued the case. The appellant has made vague allegations against her husband. It is also unbelievable that all of sudden the appellant contacted her counsel on 16.01.2012 and came to know about the dismissal of case. The appellant has slept over the matter for 6½ years. No sufficient cause has been shown to explain the delay of 6½ years.

There is no infirmity or illegality in the impugned order. The learned ADJ has rightly dismissed the application for restoration of the suit being barred by limitation.

The appeal stands dismissed.

VEENA BIRBAL, J

MARCH 30, 2012
srb