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

+ **RSA 150/2016**

**Date of Decision: 30.05.2016**

RAKESH KUMAR ..... Appellant  
Through Mr.Mahipal Singh, Advocate.

versus

NARENDER SINGH ..... Respondent  
Through Mr.S.S.Chillar, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ASHUTOSH KUMAR, J. (ORAL)**

**CAV 474/2016**

Mr. S.S. Chhillar, learned advocate appears for caveator.

The caveat is discharged.

**CM Appln.21683/2016 & CM Appln.21684/2016**

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

**CM Appln.21685/2016**

For the reasons stated in the application, the delay of 11 days in re-filing the appeal is condoned.

The application is allowed.

**RSA 150/2016**

The appellant Rakesh Kumar, has challenged the judgment and

decree dated 02.11.2011 passed by the Trial Court in suit no.189/2009 preferred by the respondent/plaintiff seeking possession of suit property, recovery of Rs.30,000/-, permanent injunction and damages for use and occupation of the suit premises, whereby the suit was decreed as also against the judgment and order dated 14.03.2016 passed by the learned Additional District Judge-05, (West), Tis Hazari Courts, Delhi, in RCA No.141/2013 whereby the judgment of the Trial Court referred to above has been affirmed and upheld.

The suit was filed by the respondent/plaintiff claiming possession of the suit premises as also recovery of Rs.30,000/- along with permanent injunction and damages, claiming himself to be the owner of the suit premises bearing no.C-346/36 in village Nangloi Jat, New Delhi, now known as Chandan Vihar, in which the appellant/defendant was inducted as a tenant for a monthly rental of Rs.5,000/-, excluding electricity. The case of the respondent/plaintiff is that no rent was paid despite repeated requests and the oral and legal notices to quit went unheeded. Hence, the suit for the aforesaid reliefs was filed by the respondent/plaintiff.

The appellant/defendant appeared before the Trial Court and sought time to file his written statement. Time was granted but on the next date, there was no appearance on his behalf and the Trial Court was constrained to proceed ex-parte vide order dated 05.09.2009.

The appellant/defendant thereafter appeared before the Trial Court on 19.10.2009 but on that day also, no effort was made to get the order dated 05.09.2009 recalled.

Perforce, the Trial Court did not have any material before him

except the plaint and the evidence offered on behalf of the respondent/plaintiff.

Four witnesses were examined on behalf of the respondent/plaintiff, all of whom supported the case of the respondent/plaintiff. Documentary evidence were also adduced namely site plan of the suit property (Ex.PW.1/A), rent agreement (Ex.PW.1/B), legal notice dated 09.06.2009 (Ex.PW.1/C), postal receipts, UPC certificates and acknowledgement card (Ex.PW.1/D, Ex.PW.1/E & Ex.PW.1/F respectively).

The appellant/defendant thereafter filed an application under Order 9 Rule 7 CPC which was dismissed by order dated 04.04.2011. The Trial Court adjourned the matter to 21.04.2011 for final arguments. On 21.04.2011 also, the appellant/defendant sought adjournment which was allowed. Thereafter, there was no appearance on his behalf and thus the Court was left with no alternative but to pronounce the judgment.

On the basis of the aforesaid documents and oral testimonies of the witnesses, the Trial Court was of the opinion that the ownership of the respondent/ plaintiff over the suit property was fully established and the testimony of the witnesses remained unchallenged and unrebutted with respect to the refusal of the appellant/defendant in vacating the suit property or paying the rent. The suit was, therefore, decreed and appellant/defendant was directed to hand over vacant possession of the suit premises; to pay an amount of Rs.30,000/- calculated at the rate of Rs.5,000/- per month for the period ranging from 05.01.2009 to 04.07.2009 and damages/mesne profits with

respect to the suit premises at the rate of Rs.5,000/- per month w.e.f. 05.07.2009 till the peaceful handing over of the suit property. The Trial Court awarded cost of the suit as well.

The appellant/defendant preferred an application under Order 9 Rule 13 CPC seeking rescission of the Trial Court judgment but the same was dismissed.

Before the First Appellate Court, the appellant/defendant submitted that because of his remaining in jail from 22.04.2011 to 23.12.2011, he could not contest the suit. However, before the First Appellate Court, the relationship of landlord and tenant was denied on the premise that the suit property belonged to his mother which was mortgaged for a sum of Rs.4 lacs but the mortgage deed, rent agreement, sale documents and other documents were handed over to the respondent/plaintiff who had promised to return the same on payment of Rs.4 lacs. It was further argued by the appellant/defendant before the Lower Appellate Court that the suit was filed by the respondent/plaintiff in collusion with his uncle namely Shri Ram Chander at whose instance, the appellant/defendant was falsely implicated in a criminal case.

The Lower Appellate Court taking into account the conduct of the appellant/defendant dismissed the appeal and suit vide judgment dated 14.03.2016.

The appellant/defendant preferred the appeal before the First Appellate Court, curiously, under Order 47 Rule 2 CPC read with Section 96 and order 43 Rule 1(d) of the CPC for setting aside the ex-parte orders dated 21.11.2014 and 26.07.2013 whereby the review

petition was dismissed.

The First Appellate Court rightly held that Order 47 provides for review and even the challenge under Order 43 Rule 1(d) was not maintainable, as the orders dated 21.10.2011 and decree dated 02.11.2011 were impugned. The application under Order 9 Rule 13 CPC was dismissed on 05.04.2013 and there is no challenge to such order. The First Appellate Court also, rightly, observed that an appeal challenging the rejection of review petition is not maintainable under Order 43 Rule 1(w) as only an order granting a review under Rule 4 of Order 47 CPC is an appealable order and not the order rejecting the application for review.

The Lower Appellate Court also found the appeal to be time barred.

During the course of execution, an application under Order 21 Rule 26 CPC was also moved by the appellant/defendant along with an application under Section 5 of the Limitation Act. The aforesaid application was also dismissed vide order dated 26.07.2013.

This Court is convinced of the fact that despite ample opportunities, the appellant/defendant did not pursue his case and it is quite evident that the sole purpose behind not pursuing his case was to delay the proceedings without any plausible reason.

This Court finds no occasion to differ with the impugned judgments of the courts below.

The second appeal is dismissed.

**CM Appln.21682/2016**

1. In view of the appeal having been dismissed, the application has become infructuous.
2. The application is disposed of accordingly.

**ASHUTOSH KUMAR, J**

**MAY 30, 2016**  
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