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

+ C.R.P. 102/2017

VIJAY KHURANA

..... Petitioner

Through: Mr.Mayank Wadhwa, Advocate

versus

AJIT KUMAR CHAWLA

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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28.04.2017

CM No.16017/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

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1. This revision petition has been filed by the petitioner herein impugning the order dated 25th February, 2017 whereby the application filed by him seeking review of the order dated 5th November, 2016 has been dismissed by the learned trial Court on the ground that it was barred by limitation being filed after expiry of 30 days and that too without filing an application seeking condonation of delay.

2. Learned counsel for the petitioner has submitted that the impugned order is illegal and against the principle of law as learned Trial Court has wrongly noted that on 5th November, 2016 that the order sought to be

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Reviewed, was passed in the presence of the plaintiff which is contrary to the record. It has been further contended that the application seeking review was filed after obtaining the certified copy of the order sought to be reviewed. The application was well within the limitation period and as per Section 12 of the Limitation Act, 1963 the time spent in obtaining certified copy should have been excluded for the purpose of computing the period of limitation.

3. The review application has been dismissed by the learned trial Court on the ground of limitation for the following reason:-

“On the point of limitation, it is submitted by Id. Counsel for defendant that present application for review has been filed within 30 days from the date of receiving of certified copy, hence, same is maintainable and not barred by limitation.

I find that order dated 5.11.16 sought to be reviewed was passed in the presence of plaintiff but present application under Section 114 7 Order XLVII R 1 CPC has been moved after 30 days on 21.12.16. There is no application or prayer for condonation of delay. Since, present application for review has not been filed within prescribed period of limitation, hence, the same is dismissed as barred by limitation.”

4. A bare perusal of the order dated 5th November, 2016 reveals that on that date the defendant was represented by Mr.Raghav Kakkar who appeared as proxy counsel for Mr.Mayank Wadhwa, counsel for the petitioner/defendant. On that date, the proxy counsel for the petitioner/defendant sought passover but the learned trial Court on being informed by the counsel for the plaintiff that costs imposed has not been paid till that date, insisted for payment of cost and the proxy counsel neither tendered the cost nor informed as to when it would be paid.

5. On the same day at about 12.43 p.m., Mr.Mayank Wadhwa, Advocate for the petitioner/defendant appeared along with proxy counsel Mr.Raghav Kakkar and he was apprised of the proceedings before the learned trial Court.
6. As the impugned order was passed in the presence of the proxy counsel Mr.Raghav Kakkar and apprised to Mr.Mayank Wadhwa, counsel for the petitioner/defendant on the same day at about 12.43 p.m., for seeking review of that order before the same Court, the petitioner/defendant could have filed the application seeking review within the prescribed period of limitation i.e. 30 days.
7. Since the application was to be filed to the learned Trial Court where original record contending the order sought to be reviewed was already there, the petitioner cannot take the plea that the order dismissing the application being barred by limitation is illegal or without jurisdiction.
8. The impugned order does not suffer from any illegality so as to warrant any interference by this Court in exercise of revisional jurisdiction.
9. The petition is dismissed.

PRATIBHA RANI, J.

APRIL 28, 2017

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