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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO 309/2018 & CM APPL. 25924/2018**

**DINESH KUMAR** ..... Appellant  
Through: Ms. Amita Gupta, Adv.

versus  
**RAJESH DABAS & ANR** .... Respondents  
Through: None

**CORAM:**  
**HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER**  
% **25.04.2019**

The learned trial court has dismissed the application of the appellant filed under Order IX Rule 13 CPC read with Section 151 CPC for setting aside the judgment and decree dated 01.05.2015 on the ground that bald allegations were made against the earlier counsel; the written statement was not filed within the stipulated period; there was no mention in the application on which date the same was affirmed.

The trial court also observed that the service was complete on the appellant and yet he chose not to appear. The blame of not filing the written statement and non-appearance was being put on the earlier counsel, which was not appreciated. However, considering the medical documents, the delay in moving the application was condoned, but the application for setting aside the judgment and decree was dismissed.

Ms. Amita Gupta, Advocate points out that the appellant had not been appearing in the matter on account of genuine difficulties. She also points out that he actually suffered from the various medical problems mentioned in his application for setting aside the decree, and the trial court has agreed



that there were medical issues and condoned the delay.

Let the trial court record be summoned as the said documents relied on are not placed on the record of this court.

Ms. Gupta, submits that the execution is now listed on 17.05.2019 before the Trial Court, and prays for an early date.

Ms. Gupta further submits that the appellant has also filed a suit for specific performance bearing CS (OS) No. 2523/2015 against the respondents herein and which is pending in the trial court. She seeks liberty to place the certified copies of the record of that suit before this Court. Liberty is granted to her to do the needful.

List the matter on 8<sup>th</sup> May, 2019.

**JYOTI SINGH, J.**

**APRIL 25, 2019**  
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