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

+ RFA 442/2025

SH S K MISHRA & ORS.

.....Appellants

Through: Mr. Prasun Kumar and Ms. Sumati
Pandey, Advocates for appellant No.1
via video-conferencing.

versus

SH NAVEEN GOEL

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **16.05.2025**

CM APPL. 29945/2025 (condonation of delay in re-filing)

By way of the present application filed under section 5 of the Limitation Act 1963 ('Limitation Act'), the appellants/applicants seek condonation of 60 days' delay in *re-filing* the present regular first appeal.

2. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
3. The delay in *re-filing* is condoned.
4. The application stands disposed-of.

CM APPL. 29944/2025 (condonation of delay in filing)

5. By way of the present application filed under section 5 of the Limitation Act read with section 151 of the Code of Civil Procedure 1908 ('CPC'), the appellants/applicants seek condonation of 02 days' delay in *filing* the present regular first appeal.



6. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
7. The delay in *filing* is condoned.
8. The appeal is taken on Board.
9. The application stands disposed-of.

RFA 442/2025 & CM APPL. 29943/2025 (stay)

10. By way of the present regular first appeal filed under section 96 read with 104 CPC, the appellants impugn judgment and decree dated 20.11.2024 passed by the learned District Judge, Karkardooma District Courts, Delhi in civil suit bearing Suit No.1610/2016.
11. Mr. Prasun Kumar, learned counsel appearing on behalf of the appellants submits, that four issues were framed by the learned District Judge *vide* order dated 26.04.2011 which are as follows :

- “1. Whether the plaintiff is entitled to recover an amount of Rs.11,23,200/- from the defendants’? OPP*
- 2. Whether the plaintiff is also entitled to recover any interest, if so, at what rate? OPP*
- 3. Whether the suit of the plaintiff is not maintainable? OPD.*
- 4.Relief.”*

12. Mr. Kumar draws attention to the decision rendered on issue No.3, namely the issue in regard to the maintainability of the suit, which the learned District Judge has decided in the following manner :

“47. The onus to prove this issue was upon the defendant. Defendant had produced evidence in this regard and has been successful in proving the case being non maintainable due to non joinder of necessary parties only as discussed above. Further, the evidences show that the document Ex.PW1/A cannot be relied upon due to inherent infirmities as discussed above. Therefore, this issue is decided in favour of the defendant and against the plaintiff.”



13. Learned counsel accordingly points-out, that despite holding that the suit is not maintainable; and despite observing that the document Exb-PW1/A - viz., an alleged Acknowledgment & Undertaking to Pay the Dues dated 27.07.2006- had inherent infirmities and cannot be relied-upon, the learned District Judge has then proceeded to decree the suit in favour of the respondent (plaintiff in the suit)
14. Issue notice.
15. Upon the appellants taking steps, let notice be sent to the respondent by all permissible modes, returnable for the next date.
16. Let the notice indicate that reply to CM APPL. No.29943/2025 be filed within 06 weeks of service; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copy to the opposing counsel.
17. Let trial court record be requisitioned in electronic form; and copy of TCR be supplied to counsel, on request.
18. Re-notify on 01st September 2025 before the learned Joint Registrar for completion of service and for completion of pleadings in CM APPL. No. 29943/2025.
19. List before court thereafter.
20. After hearing learned counsel appearing on behalf of the appellant, and on a *prima-facie* view of the matter, the effect and operation of impugned judgment and decree dated 20.11.2024 shall remain *stayed* till the next date of hearing before this court, without requiring the appellant to deposit any portion of the decretal amount *at this stage*.

ANUP JAIRAM BHAMBHANI, J

MAY 16, 2025/ds