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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 212/2018**

MANGAT RAM SAINI (SINCE DECEASED) THR LRS

..... Appellant

Through: Mr.R.K.Sharma, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **17.12.2018**

CM No.53030-31/2018 (Exemption)

Exemptions allowed, subject to just exceptions.

CM No. 53032/2018

This is an application filed on behalf of the appellant seeking condonation of delay in re-filing the petition.

For the reasons mentioned in the application, the application is allowed and the delay in re-filing the petition is condoned.

RSA 212/2018 and CM No. 53029/2018

Initial submissions have been made on behalf of the appellant.

On behalf of the appellant, it has *inter alia* been urged that the learned Trial Court and the First Appellate Court have misread and misinterpreted the evidence. Reliance is *inter alia* placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in *Kashmir Singh v. Harnam Singh & Anr.*, AIR 2008 SCC 179 to

contend that though it is a general rule that the High Court would not interfere with the concurrent findings of the Courts below nevertheless the same is not an absolute rule where:

- (i) the courts below have ignored material evidence or acted on no evidence;*
- (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or*
- (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."*

It has thus been submitted on behalf of the appellant whilst placing reliance on the catena of other verdicts, namely, ***Daljit Singh v. New Delhi Municipal Corporation***; 176 (2011) DLT 128, ***Haryana State & Anr. v. Gram Panchayat village Kalehri***; V(2016) SLT 209; ***Extra Judicial Execution Victim Families Association (EEVFAM) & Anr. V. Union of India & Anr.***; V (2016) SLT 212, ***S. K. Bhikan v. Mehamoodabee & Ors.***; III (2017) SLT 201 and ***Manuara Khatun & Ors. Mamoni Saikia Mohanty & Ors. V. Rajesh Kumar Singh & Ors.***; III (2017) SLT 203 as also the observations of the Hon'ble Supreme Court in ***Municipal Committee v. Hoshiyarpur State Electricity Board & Ors.***; VII 2010 SLT 451 relied upon by this Court in RSA No. 86/2017 titled ***M/s Capital Land Builders (Pvt) Ltd. v. Tirath Singh (Deceased) & Ors (Now Represented by LRs)***, vide the verdict dated 26.11.2018, observing to the effect that in terms of the verdict of the Hon'ble Supreme Court in ***Municipal Committee***

(supra) that Section 103 of the serves the same purpose as Section 100 Code of Civil Procedure, 1908 and thus the following substantial question of law is framed to the effect:

Whether in this case, the learned Trial Court and the First Appellate Court have committed a error in not taking into consideration and appreciating the evidence adduced by the parties?

Notice of the appeal along with the above formulation of the substantial question of law be thus issued to the respondent along with the notice of CM No. 53029/2018 on taking of steps by the appellant through all permissible modes including approved courier with the tracking report being placed on record, returnable on 30.1.2019 till which date no coercive action be taken by the respondent against the appellants.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

DECEMBER 17, 2018/sv