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

% ***Date of Decision: 8th April, 2025***

+ CM(M) 2462/2024 & CM APPL. 25353/2024 & CM APPL. 5952/2025

DEVENDER KUMAR

.....Petitioner

Through: Mr. Rajinder Singh with Mr. Arun
Sharma, Advocates.
(through V.C.)

versus

M/S NEXUS LIFE SCIENCE INDIA PVT LTDRespondent

Through: Mr. Sanjay Kumar Mishra, Advocate.
(through V.C.)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit seeking recovery of possession, arrears of rent, damages, etc.
2. The suit was filed against Mr. Devender Kumar Mishra, who was proceeded against ex-parte on 06.09.2022.
3. When an application was moved seeking to set aside the abovesaid order and to permit him to participate in the proceedings, such application also did not find favour and was dismissed by learned Trial Court on 08.01.2024.
4. Such orders are under challenge.
5. Mr. Rajinder Singh, learned counsel for the defendant (petitioner herein) admits that the defendant was served with the summons on 06.03.2020 and pursuant to the instructions given by the defendant, his



counsel Mr. Sameer Hashmi appeared before the learned Trial Court on 17.05.2022.

6. Though, the Vakalatnama was filed by learned counsel for the defendant but the matter was not pursued with the right earnest and since nobody appeared before the Court on 06.09.2022 from his side, noticing that no written statement had been filed, the right to file written statement was closed and the defendant was proceeded against *ex-parte*.

7. As noticed already, the application seeking recall of the abovesaid order has also been disallowed by learned Trial Court *vide* order dated 08.01.2024.

8. The contention raised in the present petition is two-fold. Firstly, the counsel, who was representing the defendant, did not appear with due diligence and rather stopped appearing altogether. It is submitted that such non-appearance never came to the knowledge of the defendant which resulted in adverse orders and it is in the abovesaid factual backdrop that the defendant seeks restoration of his defence. Secondly and more importantly, on account of pandemic of Covid-19 during the relevant period, the Court should have condoned the delay and should have set aside the *ex-parte* order.

9. Learned counsel for the petitioner places reliance upon *Rafiq v. Munshilal*, (1981) 2 SCC 788, *Ram Kumar Gupta v. Har Prasad*, (2010) 1 SCC 391 and *In Re: Cognizance for Extension of Limitation*, 2022 SCC OnLine SC 27.

10. This Court has gone through the application which the defendant had moved whereby he had sought setting aside of order dated 06.09.2022 whereby he was proceeded against *ex-parte*. The entire endeavour of the defendant is to blame his previous counsel. There is no explanation even



namesake as to why the defendant did not put in any appearance before learned Trial Court till 17.05.2022 when, admittedly, they were served with summons on 06.03.2020.

11. This Court is, however, cognizant about the judgment given by Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation, 2022 SCC OnLine SC 27* and the relevant paras of the abovesaid judgment read as under:-

“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

- I The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.*
- III In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.*
- IV It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings,*



outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

12. Therefore, the period falling from 15.03.2020 to 28.02.2022 is liable to be excluded.

13. It seems that the abovesaid point was not appropriately conveyed by the defendant before the learned Trial Court. It will be, therefore, in the fitness of the things if learned Trial Court considers the abovesaid application afresh while keeping the abovesaid aspect in mind.

14. Learned counsel for the defendant/petitioner submits that he would make appropriate submissions in this regard before the learned Trial Court on the next date, which is stated to be 21.04.2025.

15. In view of the above, without making any observation on the merits of the rival contentions, the present petition is disposed of with request to learned Trial Court to consider the abovesaid application moved under Order IX Rule 7 CPC afresh after giving consideration to the directions contained in *In Re: Cognizance for Extension of Limitation, 2022 SCC OnLine SC 27*.

16. Since the next date before learned Trial Court is stated to be 21.04.2025, learned Trial Court shall consider the abovesaid aspect and shall pass appropriate order, after hearing both the sides, in accordance with law.

17. Needless to say, in view of the abovesaid, the subsequent order dated 08.01.2024 is also set aside.

18. The petition, along with pending applications, is disposed of.

**(MANOJ JAIN)
JUDGE**

APRIL 8, 2025/st/pb