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

% *Date of Decision: 19th May, 2025*

+ CM(M) 925/2025 & CM APPL. 30271/2025

PREM NATH SARUP (EXPORTS) PVT LTDPetitioner

Through: Mr. Mehul Gupta, ADvocate
(Through VC)

versus

SUMIT AGARWALRespondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 30271/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 925/2025

1. Petitioner had filed a suit which was commercial in nature.
2. When such suit was taken up by the learned Commercial Court on 11.07.2023, suit was dismissed on account of non –appearance from the side of petitioner
3. Petitioner sought restoration of the aforesaid suit by moving an application.
4. Admittedly, such application has been moved on 05.03.2025, after a delay of around 566 days.
5. Learned Trial Court, after extensive elaboration of the entire factual matrix, dismissed the aforesaid application.
6. Such order is under challenge.
7. Undoubtedly, since defendant had also not appeared before learned Trial



Court, he was proceeded against *ex parte vide* order dated 19.11.2022. However, merely because of the fact that defendant was *ex parte*, plaintiff cannot seek any special concession or privilege.

8. Suit was dismissed on 11.07.2023 and the learned Trial Court noticed that there was no appearance from the side of the plaintiff on earlier occasions i.e. on 25.04.2022, 28.09.2022, 07.01.2023 and 10.03.2023 and, resultantly, the suit was dismissed for non-appearance.

9. Impugned order records specific reasons as to why the plaintiff is not entitled to restoration of the suit. These are mentioned in Para-17 which reads as under: -

“ 17.

.....

.....

a) The present suit was dismissed vide order dated 11.07.2023; even as per the case of the applicant/ plaintiff, there is a delay of 566 days of which condonation has been sought but no cogent reason has been assigned for such a long delay in filing the present application. The only reason given is that the newly engaged counsel did not keep the track of the case, which is not a sufficient cause for condonation of delay for not preferring the present application within the stipulated period of limitation.

b) Further, according to the applicant/ plaintiff, the plaintiff had engaged the new counsel in the month of November, 2022 and in the month of January, 2025, it was revealed that the present suit had been dismissed on 11.07.2023. Although the said averment has no force but even for the sake of arguments it is presumed that the applicant/ plaintiff came to know about the dismissal of the suit in January, 2025, the limitation for filing the present application would have expired in the month of February 2025 in that eventuality, whereas the present application has been filed in the month of March 2025 (.e. on 05.03.2025), which is beyond the period of 30 days for filing the present application. On this ground alone, the instant application being barred by limitation, is liable to be dismissed.

c) In case the applicant/ plaintiff had engaged the new counsel in the month of November, 2022, there was no occasion for the applicant/ plaintiff or for the newly engaged counsel not to inform this court about the change of counsel.



d) It is evident that on 10.03.2023, Ld. Predecessor of this court had imposed cost of Rs.10,000/- upon the plaintiff; no explanation has been given for not making the payment of the said cost even after coming to know that the cost had been imposed on the plaintiff. In the given circumstances, it appears that the applicant/ plaintiff did not appear on subsequent dates so that he can just avoid the payment of the said cost as imposed by the Ld. Predecessor of this court.

e) The non-appearance of applicant/ plaintiff on various occasions has already been noted down by the Ld. Predecessor of this court in the impugned order dated 11.07.2023. The grounds raised in the present application are absolutely vague, general and not specific. Applicant/ plaintiff has even not disclosed the name of newly engaged counsel. The exact date when he was allegedly engaged, the exact date or month or even year of handing over the brief again to the present counsel, etc. Thus the contentions of the applicant/ plaintiff have no force in the eyes of law.

f) No doubt that the rules of procedure should not be employed to defeat the dispensation of Justice as technicalities of procedural law are handmaid but at the same time it does not mean that procedural requirement can be thrown to winds and can be ignored out rightly.”

10. Herein also, the entire thrust is to contend that a litigant cannot be penalized for inaction of its counsel. Shelter is being sought as their counsel was casual and negligent and did not appear and did not even file *vakalatnama* before the Court. Interestingly, the name of such counsel has not even been divulged in the application.

11. Reference be made to judgment dated 08.05.2025 in *M/s Khanji Impex and Anr. Vs. M/s Transnational Shipping India Pvt. Ltd.: CM(M) No. 871/2025* wherein it has been observed by this Court that practice of passing on the buck to the counsel needs to be discouraged and rejected. Reliance was also placed therein upon *Rahul Mavai Vs. Union of India and Others: 2024 SCC Online Del 9050* wherein this Court disapproved the same, observing that a litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.



12. Plaintiff is responsible for its own miseries as it did not pursue its suit in the desired manner.

13. The aforesaid reasons given by the learned Trial Court clearly go on to indicate that the learned Trial Court has carefully perused the entire material and keeping in mind the conduct of the plaintiff and unexplained delay, the aforesaid application seeking restoration was dismissed.

14. Order is well-reasoned and there is no illegality or perversity of any kind in the aforesaid order necessitating any interference by invoking supervisory powers under Article 227 of the Constitution of India.

15. Petition is accordingly dismissed in *limine*.

(MANOJ JAIN)
JUDGE

MAY 19, 2025/dr/shs