

IN THE HIGH COURT OF DELHI

RSA No.95/2007

Sh. V.K.Ohri, Advocate Appellant
! through: Mr. A.P.Vinod, Advocate

VERSUS

\$ N.D.M.C Respondent
^ through: Mr. Arvind Sah, Advocate

% DATE OF DECISION: 21.02.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Appellant, a lawyer by profession, seeks to challenge the order dated 1.12.2006 refusing to condone the delay of 297 days in filing the first appeal.

2. The appeal laid a challenge to a judgment and decree dated 10.3.2005 passed by the learned Trial Judge in Suit No.1952/2001.

3. In the application seeking delay to be condoned in filing the appeal, it was inter alia stated that the impugned judgment and decree dated 10.3.2005 was contrary to an

award dated 26.9.2004 passed by a competent Lok Adalat on the same cause and that the appellant thought that the conflict between the award passed by the Lok Adalat and the decree could be corrected by way of a petition under Article 227 of the Constitution of India which was filed in this court praying that in view of the award dated 26.9.2004 passed by the Lok Adalat on the same subject matter, the decree dated 10.3.2005 be set aside. It was further stated that the said petition filed in Delhi High Court was dismissed on 12.1.2006 for the reason appellant had a remedy of appeal. Accordingly, it was stated that thereafter the appeal was filed.

4. I note that the appeal has been filed on 1.2.2006.

5. Reason given by the learned Additional District Judge is that the appellant who is a lawyer could not have been misguided by the interim order dated 26.9.2004 passed by the Lok Adalat and could not treat the said interim order as an award. I note that the order dated 26.9.2004 concludes as under :-

“In case this is not settled as above then this matter be placed before the next Lok Adalat.”

6. The earlier part of the order is in the nature of a recommendation for both the parties to consider the suggestion of the Lok Adalat so that the dispute could be

amicably resolved. It is apparent that the order dated 26.9.2004 is not a conclusive settlement of the dispute before the Lok Adalat.

7. It has further to be noted that after the suit was dismissed on 10.3.2005, appellant went back to the Lok Adalat with a grievance that the decree in the suit was at variance with the order dated 26.9.2004. On 29.5.2005, the Lok Adalat recorded that its order dated 26.9.2004 was an interim order and since the suit was dismissed, the Lok Adalat could pass no directions.

8. Whatever may have been the misconception in the mind of the appellant viz-a-viz the nature of the order dated 26.9.2004 passed by the Lok Adalat, same ought to have come to a rest when order dated 29.5.2005 was passed. In spite thereof, appellant chose to still persist with a wrong stand that the interim order dated 26.9.2004 passed by the Lok Adalat was a final award.

9. I reiterate that the appellant is a lawyer of substantial standing and he cannot be misled by the tenor or purport of the orders passed.

10. Notwithstanding the order dated 29.5.2005 passed by the Lok Adalat recording that its earlier order dated 26.9.2004 was not an award but was an interim order, the

appellant still persisted by filing a petition under Article 227 of the Constitution of India in this court. The petition was filed after 7 months of the order dated 29.5.2005 passed by the Lok Adalat. As noted above, the petition was filed in the month of January, 2006 and was listed for preliminary hearing on 12.1.2006, on which date it was dismissed.

11. Under the circumstances, it cannot be held that the appellant was bonafide misled by the order dated 26.9.2004 passed by the Lok Adalat and that delay of 297 days in filing the appeal should be condoned. At best, the bonafide belief of the appellant pertaining to interim order dated 26.9.2004 passed by the Lok Adalat came to an end when the Lok Adalat passed order dated 29.5.2005 recording that its earlier order dated 26.9.2004 was an interim order.

12. I note that on 30.3.2007, following two substantial questions of law have been framed :-

“1. Whether the appellant did not have sufficient ground for condonation of delay and whether the appeal filed by him is barred by time before the First Appellate Court?

2. Whether the Trial Court was competent to pass a decree on the subject matter of the suit after an award had already been passed by a competent Lok Adalat after recording the agreement between the parties and settled the matter finally?”

13. With due respect to the learned Judge who has

framed the questions of law on 30.3.2007, I beg to differ on the second question framed for the reason it relates to the merits of the decision of the learned Trial Judge. The said question of law cannot arise for consideration in the instant appeal for the reason the second appeal lays a challenge to an order passed by the learned First Appellate Court declining delay to be condoned in filing the first appeal and as a consequence dismissing the first appeal as not maintainable. The only issue before this court is whether the Appellate Court was justified in not condoning the delay in filing the appeal beyond limitation.

14. I hold that on the material on record the learned Appellate Judge has correctly opined that no sufficient cause was shown to have the delay condoned in filing the appeal.

15. The instant appeal is dismissed.

16. No costs.

February 21, 2008
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(PRADEEP NANDRAJOG)
JUDGE