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%28.03.2008

Present: Mr. Shiv Charan, Adv. for the appellants.

+CM No.4734/2008

1. There is a delay of 135 days in filing the appeal.
2. It is stated in the application that appellant No.2 was not keeping good health and appellant No.1 is an illiterate person. Without stating the handicap faced by appellant No.3, predicating a case on the aforementioned handicaps of appellants 1 and 2, drawing attention of this court to decisions of the Hon'ble Supreme court holding that a meritorious claim should not be thrown out on account of limitation, it is urged that delay in filing the appeal be condoned.
3. On an earlier occasion I had visited the law on the issue of delay to be condoned when belated appeals are filed. I had noted that as the law developed in India issue of merits of a claim got intertwined with consideration whether a delay should be condoned or not. The reason is the view taken by the Hon'ble Supreme Court that meritorious claims affecting vital rights of parties should not be sacrificed at the alter of procedural law.

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view of the merits of the claim projected by the appellants.

5. The appellants are the three sons of the unfortunate mother who is the respondent before me. Blessed with 3 sons the unfortunate mother was compelled to knock at the doors of the court to eject her 3 sons from her house.

6. Alleging that she had permitted her sons to reside with her in her house and claiming that she had terminated the permission under which her sons were residing with her, mandatory injunction was prayed for requiring the defendants i.e. the appellants to remove their belongings from her house.

7. The sons did not dispute the title of their mother. But surprisingly claimed that being sons of the plaintiff they had the right to live in the said property.

8. The respondent tendered and proved documents Ex. PW-1/A to Ex. PW-1/E being the usual documents executed in Delhi when people purchase property i.e. general power of attorney, agreement to sell and a receipt etc. The learned Trial Judge held that the said documents were insufficient to convey title. The result was that the suit was dismissed.

9. The mother went crying up in appeal. She challenged the judgment and decree dated 30.11.2005. The appeal was registered as RCA No.2/2006.

10. The Appellate Judge expressed surprise at what had been done by the learned Trial Judge. Noting that sons had not challenged the title of their mother it was held that the question of title had not to be gone into. Noting the defence i.e. that being sons they were entitled to live in the house of their mother, noting that the mother had revoked the permission under which her sons were occupying the house along with her, the decree of the trial judge was reversed. Vide judgment and decree dated 8.8.2007 the first Appellate Court decreed the suit filed by the respondent.

11. The plea urged in the second appeal by the appellants is that the suit was not for possession and under the garb of a mandatory injunction, possession cannot be gained.

12. The submission is contrary to the law laid down by the Hon'ble Supreme Court in the decision reported as JT 2005 (8) SC 509 Joseph Severance & Ors. Vs. Benny Mathew & Ors.

13. In the said decision in a somewhat similar circumstance it was held that upon termination of a license a licensee can be evicted by a decree of mandatory injunction requiring him to remove the belongings as also by means of a decree for permanent injunction restraining the licensee who has lost right under the license to enter upon the suit premises.

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14. Thus, by not condoning the delay in filing the appeal, it is not a case of a meritorious claim being sacrificed at the alter of a procedural law.

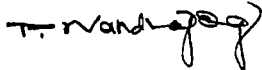
15. Pertaining to the sufficient cause on which claim for delay being condoned is predicated, suffice would it be to note that no disability of appellant No.3 has been projected. All the three sons are acting in unison. No explanation being given as to why appellant No.3 did not pursue the appeal I hold that no sufficient cause has been shown to this court entitling appellants to have the delay condoned.

16. The CM is dismissed.

RSA No.80/2008

Since delay in filing the appeal has not been condoned the instant second appeal is dismissed as not maintainable.

March 28, 2008
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PRADEEP NANDRAJOG, J.