

i.26

%29.04.2008

Present: Mr.Saurabh Kalia with Mr.Pervinder for the appellant
+CM Nos.6123-6124/2008 in RSA No.93/2008

1. Vide afore-noted applications 294 days delay in re-filing the appeal is sought to be got condoned. The blame is being shifted on to the shoulders of the previous counsel.

2. Under the appellate rules applicable as framed by this Court pertaining to the appeals Rule 5 under Chapter 1 Part-A(a) of the Delhi High Court Rules reads as under :-

"5. Amendment- The Deputy Registrar Assistant Registrar, Incharge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Asstt. Registrar, in charge of the filing counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.

*Note-*The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis *mutandis* apply to all matters, whether civil or criminal."

Signature Not Verified

Signing Date:26.07.2024 7:32:56
Certify that the digital and physical file have been compared and the digital data is as per the physical file and no page is missing.

2 ✓

3. It would be relevant to note that it took 17 filings meaning thereby 16 re-filings for the appeal to be properly constituted. The instant appeal was filed on 3.5.2007. Filing was defective. Defects were notified. It was taken back and re-filed on 14.5.2007. The re-filing was defective and continued to be defective till 11.4.2008. In between on the under-noted dates the appeal was repeatedly re-filed:-

28.5.2007, 10.7.2007, 25.7.2007, 31.8.2007,
20.9.2007, 9.10.2007, 14.11.2007, 12.12.2007,
22.1.2008, 23.2.2008, 12.3.2008, 24.3.2008,
31.3.2008.

4. It was ultimately re-filed on 25.4.2008. On said date the appeal came to be properly constituted.

5. The reason given in the application seeking delay to be condoned is too tenuous. The counsel is blamed.

6. What was the appellant doing all this while has not been explained. If counsel was repeatedly re-filing the defective appeal why did the appellant not take remedial and corrective measures with some degree of promptness? Nothing has not been explained.

7. No case is made out to condone the inordinate delay in re-filing the appeal.

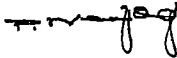
3

8. The applications are dismissed.

RSA No.93/2008

Since delay in re-filing the appeal has not been condoned the Regular Second Appeal is dismissed as not maintainable.

April 29, 2008
vg


PRADEEP NANDRAJOG, J.