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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 17, 2009

Date of Order: March 05, 2009

+ IA Nos. 1155/2009 & 1244/2009 in CS(OS) 30/2005

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05.03.2009

Krishna Finhold

...Plaintiff

Through: Mr. Abhinav Vasisht and Mr. Debojyoti Bhattacharya,
Advocates

Versus

Sita Ram

...Defendant

Through: None

JUSTICE SHIV NARAYAN DHINGRA

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

ORDER

IA No. 1244/2009

1. This application under Section 5 of the Limitation Act read with Section 151 CPC has been made by the plaintiff for condonation of delay in filing the application for restoration of the suit.

2. The suit of the plaintiff was dismissed by the Court on 20th April 2007 because of non appearance of the plaintiff despite the matter having been passed over and taken up for the second time. The application for restoration of the suit has been made on 16th January 2009. In the application it is stated by the applicant/plaintiff that the application for restoration could not be filed earlier due to unawareness and non-communication of the order dated 20th April 2007 to the plaintiff and the delay in filing the application was not

attributable to the conduct of the plaintiff who bonafidely believed that the suit was being attended by his advocate. It is submitted that the plaintiff preferred an FAO against an order dated 19th September 2005 of this Court and this FAO was decided by the Division Bench of this Court vide order dated 21st October 2005. The plaintiff then filed an SLP before the Supreme Court against the order of the Division Bench and in the meantime and this suit was adjourned from time to time. The SLP was decided by the Supreme Court on 3rd February 2007 and thereafter the plaintiff was in bonafide belief that the suit was being attended by the advocate. The plaintiff came to know about passing of the dismissal order of the suit only on 17th December 2008 when plaintiff received a copy of the application filed in another suit being Suit No.1918 of 2002 wherein it was stated that the present suit was dismissed on 20th April 2007 and a copy of the order was also enclosed. It is stated that the earlier advocate of the plaintiff due to oversight did not appear before the Court on 20th April 2007 when the captioned suit was called for hearing and did not inform the plaintiff about passing of the order. It is, therefore, stated that since the plaintiff was not aware of the date of hearing, the delay in filing the accompanying application for restoration of the suit should be condoned.

3. Plaintiff has relied upon *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123 wherein the Supreme Court held as under:

9. *It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the*

explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. *A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]."*

4. In the present case, the plaintiff wanted an interim injunction from this Court at the time when plaintiff filed the suit. When the interim injunction was not allowed, the plaintiff pursued his interim application right up to the Supreme Court, but failed. The sole interest of the plaintiff was to obtain an interim injunction. The moment the prayer for interim injunction was rejected right up to the Supreme Court, the plaintiff did not appear in the Court neither in person nor through his advocate and the suit was left at its own fate.

5. The plaintiff had filed this suit seeking a declaration that the arbitral proceedings initiated by the defendants No.1,2 and 3 before defendant No.7 against the plaintiff were illegal and also wanted a decree of mandatory injunction directing the defendants to jointly and severally to delete and omit the name of plaintiff from the array of respondents in the arbitral proceedings. One can understand that the plaintiff was solely interested in getting the arbitral proceedings stayed and his name deleted. Since he failed in his mission of achieving this by an interim injunction, this Court as well as right up to the Supreme Court he lost interest in the suit itself. Now after one year and ten months suddenly plaintiff has risen from his sleep and submits that his non appearance was due to inadvertence of advocate on that day. There is no explanation as to why the advocate who did not appear on 20th

April 2007 due to inadvertence, did not find it necessary to inquire about the fate of the case and why the plaintiff did not make efforts to find out the fate of the case after dismissal of the SLP in the Supreme Court against the interim injunction.

6. There is no doubt that the Courts of now have begin to hold that the law of limitation should not stand in the way of deciding issues on merits and the sufficient cause under Section 5 of the Limitation Act should receive a liberal consideration so as to advance the cause of substantive justice. If non appearance by oversight on a particular date by the counsel for the plaintiff and thereafter moving an application after more than one year and ten months without giving any explanation can be held as sufficient cause, then there is no necessity of law of limitation at all. Accepting such reasons as given by the applicant as sufficient reasons is sufficient to make limitation Act dysfunctional.

7. I consider that no plausible reason whatsoever is made out by plaintiff for allowing this application for condonation of delay under Section 5 of the Limitation Act. The application under Section 5 of the Limitation Act for condonation of delaying in filing the application for restoration of the suit is hereby dismissed.

IA No. 1155/2009

1. In view of my decision in IA No.1244 of 2009, this application has become infructuous and is hereby dismissed as such.

March 05, 2009
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SHIV NARAYAN DHINGRA J.