

* HIGH COURT OF DELHI : NEW DELHI

FAO. No.382/2007 & CM Nos.14028 & 14029/2007

% Judgment reserved on: 30th November, 2009

Judgment delivered on: 3rd December, 2009

Smt. Shiv Kumari
W/o. Bhuneshwar Pandey
R/o. T-A 209, Tuglakabad Extension,
New Delhi Appellant.

Through: Mr. R.A. Pandey, Adv.

Versus

1. Choudhary Prem Singh
Son of late Sri Parmal Singh
r/o. Village Madanpur Khadar,
Badarpur, New Delhi.

2. Ch. Samai Singh

3. Ch. Jagat Singh

4. Ch. Bharat Singh

All sons of Late Ch. Parmal Singh

All R/o. Village Madanpur Khader,
New Delhi-110044 Respondents.
Through: Nemo.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

Appellant has filed the present appeal in which there is a challenge to the order dated 17th November, 2004 passed by Civil Judge, Delhi. Vide impugned order, the trial court dismissed the applications filed by appellant for restoration of possession as well as for appointment of receiver.

2. Present appeal was filed on 13th November, 2006. Along with it, applications for condonation of delay in filing and refiling the appeal have been filed under Section 151 of the Code of Civil Procedure read with Section 5 of the Limitation Act.

3. In these applications, it is stated that appellant filed the present appeal on 13th November, 2006 in which objections were raised. The same could not be refilled within period and there is delay of 636/652 days in refiling this appeal. The delay is not intentional but due to bonafide reason and as such delay be condoned.

4. As per averments made in these applications there is delay of 636/652 days in refiling of the appeal. The only ground stated for condonation of delay is that “delay is not intentional and due to bonafide reasons”. There has been no mention whatsoever as to what are the bonafide reasons. No explanation has been given as to why there has been delay of about two years in filing/refiling of the appeal.

7. In *Ram Lal and Ors. V. Rewa Coalfields Ltd., AIR 1962 SC 361*, Supreme Court observed;

“The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by

Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone”.

6. In *R.B. Ramlingam v. R.B. Bhvaneshwari, 2009 (2) SCC 689*, it was observed;

“We hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition”.

8. In the present case, let alone the proof of sufficient cause, it has not even been stated as to what was the sufficient cause for the delay. Since appellant has miserably failed to show the sufficient cause, there is no merit or any substance whatsoever in the present applications for condonation of delay and as such both the applications for condonation of delay are dismissed.

9. Consequently, the appeal stands dismissed being time barred.

3rd December, 2009
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V.B.Gupta, J.