

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 24/2009**

Date of Decision: January 28, 2010

SHRI GAURAV SHARMA Appellant
Through: Mr. Sunil Bainsla, Advocate.

versus

CANARA BANK Respondent
Through: Mr. J.P.Gupta, Adv. for
Bank.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

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

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM APPL.2166/2009 (delay) in RSA 24/2009

1. A suit for recovery of Rs.2,77,848/- along with interest @ 16.25 % per annum was filed by the Respondent Bank against the appellant and two other defendants . Appellant happened to be the guarantor of the principal borrower, defendant No.1.

Defendants No.1 and 2 did not contest the suit and were proceeded ex-parte. Appellant contested the suit and suffered a decree for the suit amount alongwith pendent lite and future interest @ 9% per annum along with the other defendants.

2. Appeal against the said judgment and decree was dismissed by the Appellate Court vide judgment and decree dated 3.08.2006.
3. This appeal has been filed by the appellant on 17.01.2009. The period of limitation for filing an appeal to this court is 90 days from the date of the impugned judgment and decree of the Appellate Court. Therefore, there is a delay of around 27 months in filing this appeal.
4. In the application, the appellant has urged that there is a delay of 77 days in filing the second appeal which is an incorrect information provided to the Court.
5. As per the averments contained in the application, appellant firstly engaged the services of Mr. V.V. Singh Advocate, who had been contesting the case on his behalf and he was

under the instructions of the counsel not to appear before the First Appellate Court. However, subsequently, on Mr. Singh's showing his inability to defend the appellant, he changed his counsel and appointed Mr. O.P. Bharti Advocate to represent his case. He had been appearing on behalf of the appellant before the first appellate court regularly. Appellant has alleged that he came to know of the dismissal of his appeal only in December, 2008 when his 1/3rd salary was deducted by the department and it was on inquiry, he came to know that his appeal had been dismissed. Thereafter, he engaged the services of Mr. Sunil Bainsla Advocate now representing the appellant in this appeal. It was on 12.01.2009, that he was told by Mr. Bainsla that his appeal had been dismissed. Thereafter appeal was prepared and filed.

6. Mr. Sunil Bainsla, learned counsel for the appellant has submitted that under the circumstances, since appellant was not having the knowledge of the dismissal of the appeal and he came to know of it only in December, 2008, rather on 12.1.2009, he filed his appeal within the period of limitation. He has submitted that there were sufficient and good reasons

for the appellant in not filing the appeal within the period of limitation and, therefore, he was entitled to condonation of delay in filing the appeal and his appeal should be heard and decided on merits.

7. Mr. J.P. Gupta, learned counsel for the respondent Bank has submitted that appellant was throughout being represented by his counsel who was present on the date when the Appellate Court's judgment was pronounced and therefore, the appellant knew the fate of his appeal on the date when it was pronounced by the Appellate Court. He has argued that appellant has failed to disclose any sufficient cause for condonation of delay in filing the appeal.
8. On 3.08.2006 when the impugned order, dismissing the appeal of the appellant was pronounced, the counsel for the appellant was present. In the normal course of business, counsel was required to inform his client about the fate of the appeal. He must have informed the appellant accordingly, which fact seems to have been deliberately not disclosed by the appellant in the application.

9. The appellant was required to keep in touch with his counsel to know the proceedings of the appeal and its ultimate result. It is not acceptable that appellant after filing the appeal did not try to contact his counsel to know the fate of the appeal for about 2½ years.
10. Be that as it may, the application is not enclosed with the Affidavit of Mr. O.P. Bharti in whose presence, the impugned judgment was pronounced. Admittedly, the appellant has not taken any action or filed any complaint against Mr. Bharti for his indifferent attitude in not disclosing the fate of the appeal to the appellant. Allegations as levelled against Mr. Bharti seem to be deliberate with a view to make out a ground for condonation of delay in filing the appeal. The delay is not of few days but is of about 27 months. Appellant was required to explain each and every days delay in filing the appeal.
11. It is pertinent that this application was prepared by Mr. Sunial Bainsla Advocate for the appellant somewhere in October, 2008 whereas according to the appellant, he came to know about the impugned order only in December, 2008. If the

appellant did not know the fate of the appeal till December, 2008 it goes unexplained as to how an application for condonation of delay could be drafted and prepared by the counsel in October, 2008 i.e. about two months prior to the appellant gaining knowledge of the dismissal of the appeal.

12. It is also pertinent that the appeal was ready for filing in October, 2009 itself. There was a subsequent change in the date, when the appeal actually was filed in the Registry. If the averments of the appellant contained in the application are accepted, then Mr. Sunil Bainsla could not have prepared the appeal along with this application in October, 2008 specially when his services were engaged by the appellant only in December, 2008 or early January, 2009. It is noted that appellant has not disclosed the date on which he engaged Mr. Sunil Bainsla to file the instant appeal.

13. In view of my discussion as above, it is clear that appellant has made every endeavour by hook or by crook to make out a ground for condonation of delay in presenting the appeal. He is caught in his own web of false statement of facts made on

record.

14. Appellant, to my mind, has not been able to satisfy the court that the appeal could not be filed in time due to sufficient cause and is attributable to the conduct of his previous counsel. This also explains as to why the appellant did not take any action against the erring counsel Mr. O.P. Bharti in mishandling his brief.

15. Hence, I find no merit in the application, the same is accordingly dismissed.

RSA 24/2009

The appeal being barred by period of limitation is hereby dismissed.

**ARUNA SURESH
(JUDGE)**

JANUARY 28, 2010
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