

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

+ RSA No.56/2007 & CM No.2786/2007

Date of Decision: March 09, 2010

SUDARSHAN SHARMA Appellant
Through: Mr.K.C.Dubey, Advocate.

versus

M/S. DAILY PRATAP Respondent
Through: None.

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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 No.2786/2007 (for delay in refiling)

1. By way of this application, appellant has sought condonation of delay of three months in refiling the appeal. Learned counsel for the appellant has submitted that due to some pre-occupation of previous counsel for the appellant, appeal could not be refiled in time that great

injustice would be done to the appellant if delay in refiling the appeal is not condoned. He has further submitted that substantial questions of law in the form of grounds of appeal have been raised, which require proper consideration and adjudication by the Court and therefore, there is sufficient cause for condonation of delay in refiling the appeal.

2. Application consists of only two paragraphs, which are reproduced as below:-

- “1. That the petitioner has filed the present R.S.A. against the orders dated 01.08.2006 passed by the Ld. Appellate Court below.
2. That the registry has returned the said RSA with objections to be refiled within one week however, due to some pre-occupation of the counsel for the appellant, the same could not be refiled within the time prescribed.”

3. Thus, from bare reading of application itself, it is clear that it is devoid of any material particulars. Counsel has not explained reasons of pre-occupation of the previous advocate, because of which he could not re-file the appeal within period of limitation. It is of importance to note that affidavit of the concerned counsel, who could not re-file the appeal in time, is also not placed on record to indicate reasons of his pre-occupation

resulting into non-refiling of appeal within period of limitation.

4. Dealing Assistant had returned the appeal for removing objections and refiling it within a week. If Memorandum of Appeal is filed beyond the time allowed by the Dealing Assistant, then it has to be considered as a fresh institution. Maximum period, which a Dealing Assistant could provide to the appellant to refile the appeal, was for a period not exceeding seven days at a time and thirty days in aggregate. Since appeal was not refiled in time, it has to be considered as a fresh institution.

5. Some of the objections penned down by the Dealing Assistant were; fresh caveat report to be obtained on each set, provisions of law still not given in the opening sheet, place the opening sheet before the main petition, court fees is to be affixed according to valuation and affidavit along with the application should be attested.

6. As per noting on the objection sheet, counsel for the appellant had removed the objections on 18th November, 2006. Noting of the Dealing Assistant dated 18th November, 2006 indicate that he had also raised an objection that substantial questions of law must be given in the grounds of appeal besides removal of other objections which were raised earlier. Again, he granted a week time to remove the objections.

Objections, as raised by the Dealing Assistant, were not technical but were mandatory in nature.

7. As discussed above, application does not spell out any material or relevant particulars of alleged unavoidable circumstances, which prevented appellant or his counsel to refile the appeal within the period of limitation.

8. Learned counsel for the appellant has submitted that Court has to adopt a liberal approach in condoning delay in refiling the appeal and while considering inordinate delay in refiling the appeal, Court must also take into consideration substantial questions of law involved in the appeal. However, I do not find much force in these submissions.

9. One of the objections noted down by Dealing Assistant before accepting the appeal was to state substantial questions of law in grounds of appeal. To this objection, approach adopted by the appellant was contrary to provisions of Section 100 of the Code of Civil Procedure (hereinafter referred to as 'CPC'). Appellant removed the said objection in the following manner:-

“No need for framing substantial questions of

law separately, same has been incorporated in the grounds of appeal. Objection removed please list.”

10. Strangely enough, counsel for the appellant being oblivious of provisions of Section 100 CPC, instead of removing the objection, felt that there was no need for framing of substantial questions of law.

11. Memorandum of second appeal, as filed by the appellant before this Court, suffered from serious infirmity as provisions of Section 100 CPC have not been complied with. Section 100 CPC restricts the jurisdiction of this Court to hear a second appeal only on substantial question of law involved in the case. Therefore, it is mandatory for the appellant to precisely state in Memorandum of Appeal, substantial question of law involved in the appeal and which appellant proposed to urge before this Court. Court has to be satisfied that a substantial question of law is involved in the case and such question has then to be formulated by the Court. It may be on the proposed substantial question of law, as suggested, or such question which Court feels is involved in the case and is substantial in nature though not proposed.

12. In *Santosh Hazari Vs. Purushottam Tiwari (Dead) by Lrs., (2001) 3 SCC 179*, substantial question of law has been interpreted in the

following manner;-

“12. The phrase ‘substantial question of law’, as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying ‘question of law’, means - of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinctions with – technical, of no substance or consequence, or academic merely. Scope of ‘substantial question of law’ by suffixing the words ‘of general importance’ as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance.”

13. Thus, it is clear that this Court cannot proceed to hear the appeal without formulating substantial questions of law involved in appeal and if Court proceeds to hear the appeal without formulating substantial questions law, as suggested or which it feels appropriate for decision of the appeal, it would tantamount to its acting illegally and in abdication of the duty cast on this Court. Existence of substantial question of law is a *sine qua non* for exercise of jurisdiction under Section 100 CPC.

14. As pointed out above, no substantial question of law has been formulated by the appellant in the appeal and in absence of the same, this

Court cannot proceed to hear the appeal. Sufficient opportunity was given to the appellant to formulate substantial question of law in the appeal but, over a period of four years, appellant did not avail of this opportunity to formulate any substantial question of law in the appeal. Reference is also made to *Manicka Poosali (Dead) by LRs. & Ors. Vs. Anjalai Ammal & Anr., AIR 2005 SC 1777* and *Govindaraju Vs. Mariamman, AIR 2005 SC 1008*.

15. True that sometimes, refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. However, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and the other side cannot claim to have vested right in injustice being done because of an unintentional delay. Therefore, the term 'sufficient cause' is to be interpreted liberally. It does not mean that mere existence of a substantial question of law can be taken, *ipse facto*, as a sufficient cause to condone any delay, whatsoever, regardless of circumstances surrounding the delay. Mere existence of a substantial question of law in itself cannot be a sufficient cause to condone the delay. Even if a substantial question of law is assumed to exist, an appellant has to place some material and relevant particulars indicating unavoidable

circumstances that prevented him or his lawyer to file the appeal or refile the same within the period of limitation.

16. Coming back to the facts and circumstances of this case, at the outset it can be said that in this application, appellant has not spelled out any material and relevant particulars or other unavoidable circumstances which prevented him or his lawyer to refile the appeal within the period of limitation. Besides, appeal also does not suggest any substantial question of law and therefore, under the circumstances, I find no merits in this application. Hence, the same is dismissed.

RSA No.56/2007

17. In view of observations made in CM No. 2786/2007, appeal, being barred by period of limitation and hit by Section 100 CPC, deserves dismissal. It is accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

**MARCH 09, 2010
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