

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

+ RSA No.99/2006 & CM No.4215/2006

Date of Decision: February 23, 2010

SHRI RANBIR SINGH

..... Appellant

Through: Mr.N.S.Dalal, Mr.Devesh Pratap
Singh and Ms.Moohmisha,
Advocates.

versus

SHRI JASWANT SINGH & ORS.

..... Respondents

Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM No.4215/2006 (for stay)

1. This is an application filed by the appellant seeking condonation of delay of eight months in refilling the appeal. Learned counsel for the appellant has submitted that appeal was filed on 4th July 2005, which was returned with certain objections by Dealing Assistant.

When counsel received this appeal for removing the objections and for refiling the same, he was carrying on his office work from his residence only. Subsequently he started operating from his chamber at Tis Hazari Courts Complex and during the course of shifting the files from his residence to chamber, this file was misplaced. File could be traced out only on 11th February, 2006. After rectifying and removing the defect, he refiled the appeal on 13th February, 2006. However, Registry pointed out some more defects and asked the appellant to move an application for condonation of delay in refiling the appeal. Therefore, this application was filed, supported by an affidavit of the appellant.

2. Mr. Manish Garg was the counsel for the appellant when appeal was presented before the Registry. Reference is made to shifting of files from residence of Mr. Garg Advocate to his official chamber at Tis Hazari Courts. It is of importance that neither in the application nor during the course of arguments, counsel for the appellant could indicate as to when Mr. Garg had shifted his office from his residence to his chamber at Tis Hazari Courts Complex and what efforts were made to trace out the file. It is also pertinent that application is not supported by an affidavit of Mr. Garg, who had filed the appeal and

refiled the same.

3. Objections, which were noted by the Registry, are:-

“1. Caveat report is to be obtained or at the time of each subsequent filing.

2. Opening sheet is to be placed before the main petition/appeal is time barred.

3. Court Fee is to be affixed according to valuation.

4. Certified copy of the order dated 13/7/00 of the trial court is to be filed and stamped @ 65 paise per 360 words.

5. Certified copy of decree is to be filed and stamped accordingly.

6. All papers be filed in full scape and on one side of the papers.”

4. Appeal was refiled on 13th February, 2006. On that day, Registry noted that objections had still not been removed properly and also asked for an application for condonation of delay in refiling after removing the objections alongwith an affidavit. On 27th February 2006, when appeal was refiled, an objection was raised by the Registry that objection No.2 pertaining to filing of paper in full scape and on one side of paper had not been removed. Finally, appeal was refiled and was ordered to be listed on 17th March, 2006

for 20th March, 2006 before this Court.

5. Thus, it is clear that appellant has not specifically stated the facts indicating sufficient cause for not refiling the appeal within the prescribed period of limitation i.e. not exceeding seven days at a time and 30 days in aggregate to be fixed by Deputy Registrar, Assistant Registrar, Incharge of the Filing Counter or Dealing Assistant. Application is devoid of material particulars. It was for the appellant to explain delay in refiling the appeal specifically narrating reasons for the same.
6. As pointed out above, it is not disclosed in the application as to when appeal was returned for removing objections and as to when Mr. Garg shifted his office to Tis Hazari Courts and what efforts were made to trace out the file. Affidavit of the appellant annexed with appeal is just a supporting affidavit and does not contain any detailed particulars explaining delay in refiling the appeal.
7. Learned counsel for the appellant has submitted that delay is only in refiling the appeal, whereas appeal was filed in time. He argued that since appeal was filed in time, delay in refiling the appeal must be condoned.

8. Dealing Assistant had no power to extend the period of refiling beyond 30 days. Appellant failed to remove objections like payment of deficient court fee, certified copies of the judgment and decree of the Trial Court and other documents and papers required to be filed in full scape and on one side of the paper, were not filed within the provided period of seven days.
9. Part G, 'Rules relating to proceedings in the High Court of Delhi', Chapter 1, Rule 5 Part A sub rule (a) lays down the statutory period for refiling of the appeal and also the power of the Deputy Registrar to return the appeal for amendment and refiling the same. This rule reads as below:-

“5.(1) 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).....

(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.

10. Thus, from bare reading of Rule 5, it is clear that if Memorandum of Appeal is filed beyond the time allowed by the Deputy Registrar; in this case by the Dealing Assistant, it would be considered as a fresh institution of the appeal, which under the circumstances, admittedly is beyond the period of limitation. Condonation of delay, if any, is to be considered in the light of facts and circumstances of the case as placed on record.
11. As discussed above, appellant has failed to specify sufficient reasons required under Order 41 Rule 3 CPC for delay in refiling the appeal in his application for condonation of delay as well as in the annexed affidavit.
12. True that, term "sufficient cause" appearing in Order XLI Rule 3 CPC is generally to be construed liberally so as to advance justice to the parties and delay in refiling is not subject to the rigors, which are usually applied in excluding the delay in a petition filed under Section 5 of the Limitation Act. What is required to be seen by the Court is nature of the defect which led to return of the appeal. If the Court is of the opinion that objections are minor and technical in nature, it must adopt a liberal attitude in condoning the delay. However, where the document is returned with objections of

mandatory in nature to be filed with Memorandum of Appeal, Court has to adopt a strict view and standard of testing bona fides of the appellant before condoning the delay in refiling the appeal. This test ofcourse is to be adopted in each case depending upon the nature of objections raised by the Registry to be removed by the appellant. Court has to be conscious of the fact that non-filing of an appeal in time vests a valuable right in favour of the respondent who, on account of non-filing of appeal, becomes entitled to the benefits of the judgment/decreed/order against which an appeal is preferred. If the appeal is not filed or refiled within the period of limitation, other party has every reason to believe that appellant has accepted the order/judgment and decree of the Trial Court or the First Appellate Court, as the case may be. Court should not act mechanically and condone the delay in refiling the appeal, even if appellant has failed to show any reasonable cause.

13. In *Asha Sharma & Ors. Vs. Sanimiya Vanijiya P. Ltd. & Ors.* **162(2009) DLT 542 (DB)**, in similar circumstances where the appeal was refiled after expiry of 30 days' period, Division Bench of this Court considered and interpreted provisions contained in Part G Chapter 1 Rule 5, Part A sub rule(a) of High Court Rules relating to proceedings in the High Court of Delhi, it was observed as follows:-

“9. It is quite clear from a bare perusal of the above Rule that the Deputy Registrar cannot grant time of more than 30 days in aggregate for re-filing of a Memorandum of Appeal, for the reasons specified in Order XLI Rule 3 of the Code of Civil Procedure. If the Memorandum of Appeal, after removing the defects notified by the registry, is filed after more than 30 days, it shall be considered as a fresh appeal, filed on the date on which it is presented after removal of the defects.

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23. It is trite law that Rules of Procedure being hand-mades of justice, a party should not be refused relief merely because of some mistakes, negligence or inadvertence. Rules of Procedure are designed to facilitate justice and further its ends. But, even if we take a rather liberal approach in this matter, we are unable to find any good ground for condonation of delay in filing this appeal. None of the reasons given in the application is convincing or logical. The impression we gather is that the appellants deliberately delayed filing of the appeal so as to prolong the litigation. It cannot be said that even if the appellants were totally negligent and careless and have not come forward with any worthwhile explanation for the delay, the court ought to condone the delay in re-filing. The Rules framed by the High Court cannot be allowed to be taken so casually and there will be no sanctity behind the rules if every delay in re-filing, is to be condoned irrespective of howsoever unreasonably long and unexplained it be, and howsoever mandatory be the nature of

the documents, non-filing of which renders the Appeal defective. We cannot condone the delay merely because an application for condonation of delay has been filed. No court would not like to reject an appeal as time-barred unless there are strong reasons, which compel the court to take such a view. Some indulgence and a liberal view in such matters is well-accepted but to say that the court has no option in the matter and must accept the Memorandum of Appeal irrespective of the nature of the objections and delay in re-filing, even where there is no reasonable explanation to justify the delay, would only be travesty of justice and will be as good as removing the relevant Rule in High Court Rules and Orders, from the Statute Book.”

14. In *‘Brij Mohan Vs. Sunita’*, Volume 166 (2010) DLT 537, where a similar question was involved, considering the scope of Part G, ‘Rules relating to proceedings in the High Court of Delhi’, Chapter 1, Rule 5 Part A sub rule (a) in paras 6 and 7, I observed:-

“6. As per Sub rule (3) if the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar, Incharge of the Filing Counter under sub-rule (1), it would be considered as a fresh institution.

7. Therefore provisions of Section 5 of the Limitation Act would not be attracted to a case, where appeal was initially filed within the period of limitation but was returned back with

certain objections to be refiled within the period specified by the Dealing Assistant.”

It was further observed:-

“12. The term "sufficient cause" appearing in Order XLI Rule 3 CPC is generally to be construed liberally so as to advance justice to the parties and the delay in refiling is not subject to the rigors, which are usually applied in excluding the delay in a petition filed under Section 5 of the Limitation Act. Therefore, while considering condonation of delay in re-filing, the Court is required to consider the nature of the defects which led to return of the document and if the objections are minor and technical in nature, the Courts should be more liberal in condoning the delay. However, the standards of testing bonafides of the appellant have to be more strict where mandatory documents are required to be filed with the Memorandum of Appeal. The approach which the Court is required to adopt has to be different in each case depending upon the nature of objections raised by the Registry and required to be removed by the appellant. The Court has to be conscious of the fact that delay in refiling the appeal vests a right in favour of the respondent who, on account of non-filing of the appeal, becomes entitled to the benefits of the judgment/decreed/order against which the appeal is preferred. Non filing of the appeal within the period of limitation or refiling of the appeal beyond the period of limitation makes the other party believe that the appellant has accepted the order/judgment and decree of the Trial Court or the First Appellate Court, as the case may be. Therefore, the Court cannot mechanically condone the delay in refiling the appeal, even if no reasonable cause is shown at all.”

15. Coming back to the instant application, as discussed above, appellant has not disclosed any plausible or sufficient cause for delay of eight months in refiling the appeal. Objections raised by the Registry were mandatory to be removed as they relate to payment of deficient court fee, certified copy of Trial Court judgment, decree sheet, caveat report etc. Therefore, under the circumstances of the case, where objections were mandatory in nature and not minor or technical, Court has to be more strict in considering if appellant was able to explain delay in refiling the appeal on the yardstick of “sufficient cause”. Growing tendency to file an incomplete Memorandum of Appeal and then take unreasonable time to remove the defects, which otherwise could have been cured within a very short time, cannot be allowed to be continued, as such practice cannot be considered to be fair and reasonable and therefore it is need of the time that such tendencies are curbed. Much liberal approach only gives encouragement to such unfair practices to the detriment of the opposite party, who assumes finality in his favour on account of non-filing of Appeal within a reasonable period.
16. Hence, I find no merits in the application, the same is accordingly dismissed.

RSA No.99/2006

17. In view of dismissal of CM No. 4215/2006, appeal, being barred by period of limitation, is liable to be dismissed. It is accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

**FEBRUARY 23, 2010
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