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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 661/2010
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Judgment Delivered on: 15.11.2010

RAGHUBIR SINGH

..... Appellant

Through: Mr.Dilip Singh, Adv. for the appellant

versus

MOHD MOBIN

..... Respondent

Through: Mr.S.D. Dixit, Adv. for respondent

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

CM.No.16565/2010

1. This is an application under section 5 of the Limitation Act, seeking condonation of 99 days delay in filing the present appeal. The grounds for delay have been set out in paragraphs 2, 3, 4 and 5 of the application which are reproduced below:

"2. That the impugned order was passed on 2.3.2010 and on that day counsel of the order (sic. appellant) was not present and thereafter the counsel could not follow up the matter, so, the fact of passing of the impugned order could not come in the knowledge of the appellant.

3. That on 17.7.2010, the bailiff from court visited the house of the appellant for execution of the said order then he came to know about the impugned order.

4. That the appellant contacted the earlier counsel and enquired about the impugned order dated 2.3.2010. The counsel took time to enquire about the matter. The counsel applied for the certified copy of the impugned order on 7.8.2010 and the same was handed over by the Copying Agency on 10.8.2010.

5. That there was a bereavement in the family, so the matter could not be followed up for (sic. and) the file of the case was handed over to the present counsel on

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

RFA NO.661/2010

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30.8.2010. The present counsel was out of town from evening of 30th August, 2010 to 5th September, 2010."

2. Counsel for the appellant submits that counsel, who was engaged in the matter earlier did not appear before trial court on 02.03.2010, on which date trial court had passed an order dismissing the application of the appellant for leave to defend. It is also submitted that thereafter it is only on 17.07.2010 when the Bailiff from the court visited the house of the appellant, the appellant came to know of the judgment and decree dated 02.03.2010; thereafter the appellant contacted the earlier counsel, who took time to enquire about the matter; copy of the judgment and decree was applied for on 07.08.2010, which was received on 10.08.2010. It is further submitted that there was a bereavement in the family, so the matter could not be followed up and the file of the case was handed over to the present counsel only on 30.08.2010 and the appeal was filed on 10.09.2010.
3. It is contended that the delay in filing the appeal is on account of the *bona fide* reasons and not on account of any negligence or inaction.
4. The present application is opposed by counsel for the respondent, who submits that the appellant has failed to disclose sufficient cause for not filing the appeal within the prescribed period of 90 days. It further contended that the application is extremely casual and vague in nature, as it does not disclose as to why the counsel did not appear on 02.03.2010 nor does it disclose if any action has been initiated

by the appellant against the earlier counsel. He further submits that even after 17.07.2010, the appellant has taken one and a half months to file the appeal, which shows the callous nature of the appellant.

5. I have heard counsel for the parties and perused the application and reply filed. It has been held by the Supreme Court in the case of **Salil Dutta v. T.M. and M.C. Pvt. Ltd.**, reported at JT 1993 (4) SC 528, that:

"The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex- parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition."

6. In a recent decision rendered by the Supreme Court of India in **Balwant Singh vs. Jagdish Singh & Ors.**, reported at 2010 (6) SCALE 749, while deciding an application under Order XXII Rule 9 CPC and Section 5 of the Limitation Act, it was held as under:

13. ... We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately

2

depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party. In the case of *State of Bihar v. Kameshwar Prasad Singh* [(2000) 9 SCC 94], this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications. In the case of *Ramlal and Others v. Rewa Coalfields Ltd.*, [AIR1962 SC 361] this Court took the view:

"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other

8

consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chathappan*, ILR 13 Mad 269.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. 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. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration;..."

7. The Supreme Court in the case of **P.K.R. Ramachandran v. State of Kerala**, reported at (1997) 7 SCC 556, has held that an essential pre-requisite of exercising discretion to condone the delay is that the court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.
8. Applying the aforesaid principles to the facts of this case, it may be noticed that the respondent had filed a suit under the provisions of Order 37 of the CPC, based on a cheque of ₹10.0 which was dishonoured on account of insufficient funds. An application for leave to defend was filed wherein a defence was raised that a false complaint was filed against the appellant and the cheque in question was taken in the police station under coercion and pressure. While on merits there is no explanation as to why after signing the cheque, the appellant did not take

9

any action against the respondent for extracting the cheque by coercion and undue influence. There is also no explanation as to why the counsel did not appear on 02.03.2010. The application also does not disclose if any action was initiated against the lawyer and if not, why no action was taken. The application is not supported by affidavit of earlier counsel, who was engaged in the matter. The only inference which can be drawn is that the entire burden is being shifted on the earlier counsel. Another ground taken in the application for the delay in filing the appeal is bereavement in the family. The application also does not disclose who had died and when, and the relationship between the appellant and the deceased. The application gives the impression that the application is not bona fide and that the appellant has been extremely negligent and callous in pursuing his matter.

9. While dealing with an application for condonation of delay under Section 5 of the Limitation Act, the Court must bear in mind two important considerations. Firstly, the expiration of limitation for filing an appeal gives rise to a legal right to a decree-holder to treat the decree as binding between the parties and this right should not be lightly disturbed. Second, if sufficient cause is shown for condonation of delay, the delay should be condoned. It has been repeatedly held by the Supreme Court of India that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice. In the same breath, it has been held that the discretion should be exercised. When there is no negligence or inaction

10

nor want of bona fides imputable to the appellant the Court must be satisfied that there was due diligence on the part of the appellant.

10. I have given my thoughtful consideration to the matter based on the facts of the present case and the aforementioned judgments cited, I am unable to satisfy that the delay was caused on account of sufficient grounds. I find that no details or particulars have been placed on record to show that the delay was actually on account of negligence of the lawyer.

11. In view of above, no grounds are made out. The application is dismissed.

RFA 661/2010

12. In view of order passed in the application for condonation of delay, appeal is dismissed.

November 15, 2010

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G.S. SISTANI, J.