

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FAO(OS) No.419/2008 & CM Nos.14491-14492/2008

DR. S.S. SRIVASTVA Appellant through
Mr.Ravi Gupta, Sr. Adv. with
Mr. Swastik Singh, Adv.

versus

THE STATE & ORS. Respondents through
Mr. B.L. Anand, Adv. for
Respondents No.3 & 4
Ms. Amrit Kaur Oberoi &
Ms. Kanika Sabharwal, Adv.
for Respondent No.5

Date of Hearing : September 15, 2010

% Date of Decision : October 08, 2010

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the Judgment should be reported in the Digest? | No |

VIKRAMAJIT SEN, J.

CM No. 14992/2008

1. We shall decide this Application filed under Section 5 of the Limitation Act seeking condoning of 513 days delay in filing the present Appeal. The impugned Order notes the failure of the Appellant to prove the Will by production of either of the attesting witnesses. Along with the petition an affidavit of Dr.

N.L. Gupta had been filed which is treated as his examination-in-chief. The learned Single Judge has opined that since Dr. N.L. Gupta was not produced as a witness with the result that he was not subjected to cross-examination, his affidavit was of no avail. The probate petition was contested by the four sisters of the Petitioner.

2. The grounds for condoning the delay in filing the Appeal is that the Appellant was allegedly not aware of the passing of the final orders dated 5.2.2007. The Appellant asserts that he gained information of this fact only on receiving of copy of the order by post on 2.8.2007. Learned counsel for the Respondent has emphasized that the Appellant has not disclosed the person or manner in which a copy of the order was received by him. This indeed is a material objection. However, there is further delay even after the alleged receipt of the impugned Order. According to the Appellant he had requested his counsel to apply for a certified copy which was made available only in September, 2007 and that he was disheartened because of the impugned Orders.

3. The Appellant has made general assertions that he is suffering from various physical ailments; that he suffered two severe heart attacks which have completely shaken him up and he is still under trauma. He stated that he has developed

muscular dystrophy. He was admitted to ICU from 14.9.2008 to 16.9.2008. In September, 2008 the Appellant filed a Review which was dismissed as withdrawn on 26.9.2008. The present Appeal has been filed on 1.10.2008.

4. Learned counsel for the Appellant has argued that the Appellant suffered heart attacks in 1999 and 2004. This period is not relevant for the present purposes. Counsel for the Appellant has further stated that the Appellant visited National Heart Institute due to severe pain on 6.12.2007. But there is no evidence of any hospitalization. It is also submitted that the Appellant visited National Heart Institute due to weakness, sleep disorder and lower back ache on 7.7.2008; he has not undergone hospitalization.

5. It is relevant for us to consider the conduct of the Appellant immediately upon the passing of the impugned orders in February, 2007. In this period, even on the Appellant's own showing, he was not suffering from any medical disorders such as would make it impossible for him to file the present Appeal. As we have already noted, there is only a vague assertion that the first time he became aware of the passing of the impugned Order was on 2.8.2007 on receiving a copy of the order served by post. This version is only to be stated for it to be immediately rejected. Not only does it lack in material particulars but it is a

wholly incredulous story. Even if it were to be taken as correct, the Appellant would be expected to take necessary legal actions immediately thereafter. The Appeal, however, has been filed on 1.10.2008 i.e., the following year, thereby causing a delay of 513 days.

6. According to the Respondents, the Appeal has been filed only after they demanded their share in their father's property.

7. We are not satisfied that sufficient cause has been shown for condoning this extra ordinary delay.

8. The application is dismissed.

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9. Since the Application seeking condonation of delay of 513 days in filing the Appeal has been dismissed, the Appeal as well as all the pending application also stands dismissed.

(VIKRAMAJIT SEN)
JUDGE

October 08, 2010
aj

(MUKTA GUPTA)
JUDGE