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

+ RFA 716/2010

% Date of Judgment 10th November, 2010

NAVAL KUMAR Appellant
Through : Mr. S.K. Singh and Mr. R.S. Rana, Advs.
versus

GURMEET KAUR Respondent
Through : Mr. P.K. Bansal, Adv.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether reporters of local papers 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?

G.S.SISTANI, J (Oral)

CM NO.18024/2010.

1. This is application filed by the appellant under Order 41 Rule 3A read with Section 5 of the Limitation Act seeking condonation of 34 days delay in filing the present appeal.
2. The grounds for delay have been set out in paragraphs 11 and 12 of the present application, which are reproduced below:

- "11. That for the purpose of preferring the present appeal the Appellant had already applied for certified copy on 24th of May, 2010 itself. Accordingly, the certified copy was prepared on 31st May, 2010 as approximately 8 days time took while obtaining certified copy.
12. That after coming to know about the impugned judgment/decreed the Appellant could not contacted the counsel immediately for modalities of preferring the appeal. Furthermore, the appellant for considerable period of time was not in Delhi due to his personal reason. In these circumstances the Appeal could not been preferred in time. The non-filing of Appeal within stipulated period of time is neither intentional nor deliberate and the delay occurred in filing the Appeal is liable to be condoned."

3. Learned counsel for the appellant submits that after passing of the impugned judgment/decreed dated 21.5.2010 the appellant could not contact the counsel for preferring an appeal against the impugned judgment/decreed and further the appellant was out of

Delhi for a considerable period due to his personal reasons. Counsel for the appellant further submits that a liberal view should be taken in this matter and delay should be condoned.

4. Mr. P.K. Bansal, Advocate, enters appearance on behalf of the respondent and has vehemently opposed the present application for condonation of delay on the ground that the appellant has failed to show sufficient cause for condoning the delay.
5. I have heard counsel for the parties, who have taken me through the application. The basic facts are not in dispute that the judgment/decreed was passed on 21.5.2010. Present appeal has been filed on 1.10.2010 after a delay of 34 days.
6. I have carefully perused the application filed under Section 5 of Limitation Act, the same is vague and lacks material particulars. It is not disputed that appellant was aware of the judgment and decree dated 21.5.2010. It is nowhere stated in the application as to why the appellant could not contact his counsel after passing of the impugned judgment/decreed dated 21.5.2009 and further neither any period has been mentioned during which period the appellant was out of Delhi nor any reason, due to which the appellant was out of Delhi, has been mentioned in the application. The present application does not state as to where the appellant was during the period. A reading of the application shows that the application is extremely casual in nature and lacks material particulars and, thus, would disentitle the appellant from seeking discretionary relief of condonation of delay.
7. In the case of **P.K. Ramachandran Vs. State of Kerala & Anr.** (1997) 7 SCC 556, the Supreme Court 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. 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 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.
9. The facts of this case are to be considered on the touchstone of the broad principles which have been laid down by the Supreme Court of India while considering the application for condonation of delay. The conduct of the appellant in the present case shows total callousness and negligence. The explanation rendered by the appellant that the appeal could not be filed as after passing of the impugned judgment/decreed dated 21.5.2010 the appellant could not contact the counsel for preferring an appeal against the impugned judgment/decreed and further the appellant was out of Delhi for a considerable period due to his personal reasons does not inspire confidence. I am of the view that appellant has miserably failed to show any cause, much less a sufficient case for

condoning the delay in filing the present appeal. Extracted paragraph of the application does not spell out any reason or cause for condonation of delay. In these circumstances the Court is unable to satisfy itself that delay was caused due to sufficient reasons. Accordingly I find no grounds to entertain the present application, the same is accordingly dismissed.

RFA 716/2010 & CM NO.18025/2010 (STAY).

10. Appeal as well as application stands dismissed in view of the orders passed in the application for condonation of delay.

G.S. SISTANI, J.

November 10, 2010
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