

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

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RSA NO. 7/2010

Date of Decision: May 06, 2010

SUMER CHAND GUPTA Appellant
Through: Mr. D.S. Patial, Advocate

versus

INDER KUMAR Respondent
Through: Mr. Shiv Charan Garg,
Adv. with Mr. Imran Khan,
Adv.

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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)

1. Appellant is the brother of Respondent Inder Kumar, since deceased, now being represented by his legal heirs as Respondents. Inder Kumar claimed that he was the owner of property No.7309/2, Prem Nagar Delhi and had permitted his brother/appellant to live in the said property. He claimed

ownership of the property by virtue of a Will dated 25.01.1993 executed by Smt. Kashmiri Devi, mother of the parties. Since appellant failed to vacate the premises, Inder Kumar filed a suit for possession, permanent and mandatory injunction and for recovery of damages. The Trial Court decreed the suit of the Respondent, keeping the question of ownership of the Petitioner open. The appellant filed Regular Civil Appeal No.17/2008 on 25.10.2008 along with an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal. The Appellate Court dismissed the application, vide impugned order dated 6.10.2009.

2. Mr. D.S. Patial, learned counsel for the appellant has submitted that substantial question of law as suggested in para 7 of the appeal are required to be formulated. He has submitted that the Appellate Court did not consider 'sufficient cause' as shown by the Appellant for delay in filing the appeal, which if considered, would have entitled the appellant to condonation of delay. It is further argued that appellant was unwell and therefore appeal could not be filed in time.

3. Submissions made by the counsel for the appellant are refuted by Shiv Charan Garg counsel for the Respondent. He has submitted that in the application for condonation of delay, appellant had not taken any ground of his sickness which could be considered as sufficient cause for condonation of delay.
4. The Appellate Court while dismissing the application observed:-

“...The medical ground as urged on behalf of the appellant has been placed on record for the first time today. The consideration of his being senior citizen is also immaterial because it is the majesty of law which shall prevail and not the emotions but the senior citizen must be facilitated by hearing their respective claims as soon as it is possible so that they may get their claims decided speedily which has been done by me in this case. Admittedly, the time of filing the appeal has already expired before applying for certified copy of the impugned judgment and decree and it is nowhere mentioned in the application as to what occasioned the appellant on 24.10.08 that he was seeking the advice for filing the appeal on that very date and not prior to that date. No explanation has come forth as to how the photocopy of the impugned judgment and decree dated 4.4.08 came in his possession on the basis of which he filed this appeal and subsequently filed the certified copy which was

taken subsequently in time. The law of limitation does not provide for covering the period of limitation or giving sufficiency of reasons for delay by applying or obtaining the certified copies again and again. In these circumstances, even after taking the most liberal considerations in my mind, I see no cogent and plausible reason for condoning the delay in filing the present appeal. Hence, the application of the appellant under Section 5 of the Limitation Act is hereby dismissed.”

5. The impugned judgment and decree is dated 12.03.2008. Appellant applied for certified copy of the judgment and decree on 24.10.2008 which was prepared on 24.11.2008. Appeal was filed on 25.10.2008. Thus, it is clear that appellant applied for certified copy of the impugned judgment and decree just one day before filing of the appeal. Therefore, the appeal was filed without the certified copies of the judgment and decree without compliance of mandatory provisions of law. Besides, appellant applied for certified copy after the expiry of period of limitation for filing the appeal, which was 30 days before the ADJ. Therefore, the appellant was not entitled to take any protection under Section 12 of the Limitation Act.
6. As regards appellant having suffered heart-ailment, no such

plea was raised in the application but some photocopies of the medical prescription have been produced before the Court at the time of submission. Medical record of the appellant is annexed to the appeal as Annexure C. Annexure C is discharge summary which indicates the date of admission as 25.09.2003 and date of discharge as 27.09.2003. The decree was passed on 12.03.2008. Over a period of five years, the appellant must have been under medical treatment if he continued to be a heart patient. Other documents annexed are the prescription slips dated 22.09.2003 and 20.09.2004. Thus, it is clear that appellant failed to produce any medical record to show that he was suffering from some serious ailment after the passing of the decree and therefore could not file the appeal in time.

7. True that while considering application for condonation of delay, the Court has to adopt a liberal approach. However, the Court has to see sufficient reasons while deciding application for condonation of delay. A valuable right accrued in favour of the Respondent when appeal was not filed within the period of limitations as Respondents had

accepted that no appeal had been filed challenging the judgment and decree of the Trial court. Appellant in this case cannot even claim ignorance of law as he was fully assisted by proper legal advice.

8. Under these circumstances, I find no reason to interfere in the impugned order of the Trial Court when it dismissed the appeal being barred by period of limitation. The Appellate Court did not consider the merits of the appeal in view of its holding that the appeal was barred by period of limitation.
9. Coming to the suggested substantial question of laws, at the outset, it can be said that the questions as formulated, nowhere suggests that they are substantial question of law. In fact the question as suggested in no manner can be considered as question of law as they have no bearing to the facts and circumstances of the case.
10. It was pointed out by the counsel for the Respondent that genuineness of the Will, on the basis of which Respondent sought ownership right, was accepted by the Court in view of the acceptance of the Will by the appellant and because of this

acceptance; the Court observed that no probate was required. Be that as it may, the Court has granted the decree without deciding the title of the Respondent in the suit property while holding that the appellant was the licensee of the Respondent in the suit property and was liable to vacate the same. Apparently no strong case has been made out in the appeal which warrant this Court to set aside the impugned order and condone the delay in filing the first appeal.

11. Hence, I find no reason to interfere in the impugned order of the Trial Court, the appeal being without any merit is hereby dismissed.

ARUNA SURESH, J.

MAY 06, 2010
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