

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

+ **Ex.F.A. No.18/2009**

% **Judgment Reserved On: 15.11.2010**
Judgment Delivered On: 25.11.2010

SANJU KUMAR PRASAD Petitioner
Through: Shailender Dahiya, Advocate

Versus

BRITISH MOTOR CAR CO. LTD. Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|----|
| 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 |

MOOL CHAND GARG,J.

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CM No.18030/2009 (for condonation of delay)

1. This is an application filed by the appellant under Section 5 of the Limitation Act for condoning the delay in filing the present appeal. The impugned order was passed on 25.05.2009 and the limitation for filing the appeal was expired on 23.8.2009. The appellant had applied for the certified copy of the impugned order on 15.07.2009 and the same was delivered to him on 17.07.2009, thus the appellant was entitled for extension of three days i.e. upto 26.08.2009. However, this appeal was filed on 07.12.2009.

2. The reasons given by the appellant for condoning the delay are as follows:-

“4. That on 07.08.2009 the respondent was directed to return the amount of ` 1,65,000/- along with interest @ 6% p.a. to the petitioner/appellant in the execution and the next date of 28.08.2009 was fixed and the petitioner/appellant was still hopeful

that the respondent would compromise the matter as per earlier settlement with the petitioner/appellant instead of returning the money, and as such the petitioner/appellant waited for the response instead of filing the appeal against the impugned order as he was also conscious about financial constraints involved in filing the present appeal. But the respondent returned the money on 28.08.2009 and it came apparent that there would be no settlement with the respondent.

5. That the applicant went to Agra four times from 29.08.2009 till 07.09.2009 and stayed there for two days on each visit for management of an event which was to be held from 13.09.2009 and therefore, the applicant could not contact his counsel in person and therefore, the applicant met his counsel on 08th September and instructed him to file the petition, but in the evening of 08th September, 2009, the counsel's daughter fell sick and she was diagnosed as suffering from swine flu and when the daughter was sick even his son got admitted in hospital on 13th September, 2009 and he was diagnosed as a case of swine flu and during this period from 08th to 25th September, 2009 could not spare time for filing the appeal due to sickness of his children and other household commitments. The applicant's counsel finally prepared the petition under Article 227 of the Constitution of India during the vacation from 26th to 28th September, 2009 and it was ready to be filed on 30th September but could not be filed as the Hon'ble High Court was closed upto 04th October, 2009 due to the vacations.

6. That subsequently the petition under Article 227 of the Constitution of India was filed on 05.10.2009 as per filing No. 155338 but there were some objections and the said petition was re-filed after removing objections on 12.10.2009 and it was finally listed before the Hon'ble court on 20.10.2009 and the petition was dismissed as withdrawn with liberty to file an appeal under Order XXI Rule 58 by the Hon'ble Court of Justice Rajiv Sahay Endlaw, as per order dated 20.10.2009."

3. No document to prove the illness of the daughter of counsel for the appellant or to prove appellant's visit to Agra from 29.08.2009 to 07.09.2009 have been filed on record. Admittedly, the appellant has also

filed a petition under Article 227 of the Constitution of India much belatedly, which was dismissed as withdrawn vide orders dated 20.10.2009 passed by Justice R.S.Endlaw. The appellant has also not placed on record the copy of the order passed by Justice R.S.Endlaw to support his plea that liberty was granted to the appellant to file this appeal saving the right of limitation.

4. Many a times the merits of the case also becomes a ground to condone the delay. However, in this case the appellant claims to have purchased the property from Sushma Kapoor in terms of agreement to sell dated 31.03.2006 and the said Sushma Kapoor is stated to have purchased the property in question from Sudha Sori vide agreement to sell dated 1.2.2006, whose objections to the decree, which is now sought to be set aside by the appellant in his objections, were dismissed by the learned Predecessor of the court below vide order dated 20.02.2007. It is, therefore, apparent that the litigation which is being continued starting from Krishna Devi till the present appellant is nothing else but an abuse of process of court and thus, calls for no interference or discretion of this Court in condoning the delay.

5. In these circumstances, the application for condonation of delay in filing the appeal is dismissed.

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In view of the orders passed in CM No. 18030/2009, the Execution First Appeal also stands dismissed.

CM No. 18029/2009

Interim order, if any, stands vacated.

Application stands disposed of.

MOOL CHAND GARG,J

NOVEMBER 25, 2010

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