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IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA 377/2010

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Judgment Delivered on: 27.1.2011

SUKHINDER SINGH & ORS

..... Appellant

Through: Mr.Rajeev Sawhney, Sr. Advocate with
Mr.Gaurav Duggal, Adv. for appellant

versus

GURBUX SINGH & ORS

..... Respondent

Through: Mr.Amit S. Chadha, Sr. Advocate with
Mr.Kunal Sinha, Adv.for respondent no.1

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.10792/2010

1. This is an application filed under section 5 of the Limitation Act, seeking condonation of 8 days delay in re-filing the appeal. In this case judgment was pronounced on 14.01.2010 and the appellant applied for a certified copy of the judgment on 21.01.2010, which was made available to the appellant on 27.01.2010. Upon

obtaining the certified copy of the judgment, the appellants filed a review application on 22.02.2010. The review application was thereafter dismissed on 17.04.2010 vide a detailed order. It is contended that the appeal was initially filed within the period of limitation i.e. on 20.04.2010. The appeal was returned back with objections and the same was re-filed on 20.05.2010 and thereafter was again re-filed on 28.05.2010.

2. Learned senior counsel for the appellant submits that there is a delay of eight days in re-filing the appeal and the same is on account of time taken in retyping the voluminous and numerous documents which were old and illegible and had to be made a part of the record of the appeal.
3. Learned senior counsel for respondent no.1 while relying on Delhi High Court Rules, submits that since the appeal was not re-filed within the maximum period allowed, which is 30 days, the same would amount to fresh filing and thus there is delay of 37 days. Learned senior counsel for respondent no.1 also submits that no application has been filed giving sufficient reasons for delay of 37 days.

“Rule 5 Chapter ‘1’, Part A prescribes as under:

5. *Amendment* -- The Deputy Registrar, Assistant Registrar, Incharge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order 41 Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Assistant Registrar, in charge of filing counter under Sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar, In-charge of the Filing Counter, under Sub-rule (1) it shall be considered as fresh institution.

[*Note:* The provision contained in Rules 5(1), 5 (2) and 5 (3) shall mutatis mutandis apply to all matters, whether civil or criminal.]

4. Mr.Sawhney, learned senior counsel for the appellant submits that the delay in refiling, if any, is only of eight days and not of 37 days as contended by the respondents. The counsel further has drawn attention of the court to the additional affidavit which has been

filed in which the reasons for delay have been explained. It has been stated that after filing of the appeal, an objection was raised by the Registry that the Vakalatnama did not contain the enrolment number of the Advocate, which was removed when the appeal was refiled on 20.05.2010. Thereafter another objection was raised that telephone number of the advocate was not given in the Vakalatnama. Learned senior counsel for the appellant submits that in addition thereto a review of the judgment dated 14.01.2010 was filed, which was disposed of on 17.04.2010. He also submits that the time spent in pursuing the review ought to be deducted in which case the appeal would be well within the period of limitation. He further submits that this issue need not be dwelled upon by this court, in view of the fact that in spite of the appellant filing a review, initially the appeal was filed within the period of limitation.

- 5.** The Registry was directed to calculate and give a note with regard to delay, if any, in filing the appeal. The Registry has filed its report to the effect that there is no delay in filing and first re-filing of the appeal, while there is a delay in second re-filing which is of

8 days. Accordingly, I find no force in the contention of counsel for respondent no.1 that the delay is of 37 days.

6. In support of the plea of the counsel for the appellant that sufficient and cogent reasons existed for delay that occurred in refilling the appeal, the counsel for the appellant submits that the Apex Court has consistently held that ordinarily a litigant does not gain by filing an appeal beyond the period of limitation. While relying upon **Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others**, reported at AIR 1987 Supreme Court 1353, counsel for the appellant submits that ordinarily a litigant does not stand to benefit by lodging an appeal late and also refusing to condone delay can result in a meritorious matter being thrown out at the very threshold, defeating the cause of justice.
7. It is trite law that the Courts must take a liberal approach while dealing with an application for condonation of delay since rules of procedure being hand-mades of justice, a party should not be made to suffer merely because of some mistake, negligence or inadvertence. Rule of procedure are designed to facilitate justice

and further its ends. The Supreme Court in *Indian Statistical Institute v. Associated Builders*, reported at (1978) 1 SCC 483, at page 489 has held that the delay in refilling is not subject to the rigours which are usually applied in excluding the delay in a petition filed under section 5 of the Limitation Act. The relevant para reads as under:

10. The High Court was in error in holding that there was any delay in filing the objections for setting aside the award. The time prescribed by the Limitation Act for filing of the objections is one month from the date of the service of the notice. It is common ground that the objections were filed within the period prescribed by the Limitation Act though defectively. The delay, if any, was in representation of the objection petition after rectifying the defects. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation if the petitioner satisfies the court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act. The application filed before the lower court for condonation of the delay in preferring the objections and the order of the court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return the Registrar did not

even specify the time within which the petition will have to be represented.

8. I have heard counsel for the parties and have also perused the application and record of the case. The suit of the plaintiff (appellant herein) was dismissed on 14.01.2010 and the appellants applied for a certified copy of the judgment on 21.01.2010, which was made available to him on 27.01.2010. Initially the appeal was filed within the period of limitation i.e. on 20.04.2010, but was returned under objection. One of the defects pointed out was that the Vakalatnama filed by the appellant did not contain the enrolment number of the counsel, which objection was duly removed. Other objection was with regard to the list of dates, since it was beyond three pages. The counsel for the appellant submits that the said objection could not be removed since it was virtually impossible to reduce the list of dates and thus, permission of the Registrar was sought to file the list of dates beyond three pages which was granted. After removing all other defects, the appeal was re-filed on 20.05.2010 when again an objection was pointed that the Vakalatnama did not mention

the telephone number of the counsel. The counsel has further contended that after removing all objections, the appeal was re-filed on 28.05.2010 and the delay of 8 days occurred due to re-typing of numerous documents, around 640 pages in number, which were old and illegible and which could not be typed when the appeal was originally filed, but had to be made part of the record of the appeal. The appellants had also preferred a review application before the learned trial court and the judgment of the review dated 17.04.2010 was also to be placed on record, after getting the same typed.

9. In the case of **P.K. Ramachandran Vs. State of Kerala & Anr.** reported in (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 grounds taken in the application for delay were either reasonable or satisfactory.
10. Applying the settled position of law and taking into consideration the averments made in the application and the additional affidavit filed, I am of the view that the delay is neither deliberate nor

intentional and that the delay has been sufficiently explained. The application is thus, allowed. Accordingly, delay in re-filing the appeal is condoned.

11. Application stands disposed of.

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12. Issue notice to show cause as to why the appeal be not admitted.

Mr.Kunal Sinha, Advocate accepts notice on behalf of respondent no.1. Notice be issued to the unserved respondents, returnable on 28.04.2011.

G.S. SISTANI, J.

January 27, 2011
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