

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

+ **RFA 332/2011**

% **1st February, 2012**

LIYAKAT ALI Appellant

Through : None.

versus

ANUPAM CHIB & ORS Respondents

Through : Mr. Deo Prakash Sharma and
Mr. Umesh Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 11989/2011

1. This application for condonation of delay of 339 days is filed in the appeal challenging the impugned judgment and decree dated 25.3.2010 decreeing the suit of the respondents/plaintiffs for possession and injunction.

2. The facts of the case are that the appellant/defendant No.2 led no evidence whereas the respondents/plaintiffs filed the necessary documentary

proof of title in their favour with respect to the suit property. The respondents/plaintiffs were also shown as owners in the revenue record and which documents were proved and exhibited. A Local Commissioner also gave a report in favour of the respondents/plaintiffs of the appellant seeking to take forcible possession by observing that the partitioned wall was newly constructed. Once the respondents/plaintiffs are shown to be the owners by means of title documents, being the sale deed, the trial Court was justified in decreeing the suit for possession and injunction in favour of the respondents/plaintiffs.

3. The grounds given in the application for condonation of delay read as under:-

“2) It is submitted that on behalf of the appellant, the petitioner No.1/Liyakat filed evidence by way of affidavit. The said affidavit was tendered as Exhibit PW1/a. Unfortunately, on account of ignorance, the said witness could not appear before cross examination as the said witness understood that only affidavit was required to be filed and subsequently he was required to appear for cross examination also.

3) It is submitted that as the evidence on behalf of the appellant could not be completed on account of ignorance/omission, therefore, appellant No.1/Liyakat Ali could not appear for cross examination and in the absence of the petitioner, the learned trial Court passed the impugned order dated 25.3.2010.

4) That the petitioner was not aware of the passing of impugned order and the petitioner could know about the passing of the judgment and order dated 25.3.2010 only on 6.5.2011 when the respondent along with some unknown persons/antisocial persons came to site to take possession at the property in question.

5) Then thereafter the draft appeal was prepared, however, the same could not be finalized for want of certain important papers and documents which were very much necessary and were significant to file in the present proceedings for its effective adjudication and disposal by this Hon'ble Court.

6) Thus, in view thereof, it took some time for the Petitioner in this process and then immediately the appeal was finalized and is now being filed without any further delay in the matter.”

4. In my opinion, the aforesaid facts which are stated are narration of facts as differentiated from sufficient cause. The expression sufficient cause means statement of facts which prevented a person from filing the appeal. Surely, a person who contests the case to the hilt cannot take up a stand that he does not know that he was not required to appear for cross-examination after filing of evidence by way of affidavit. I am informed by learned counsel for the respondents/plaintiffs that in execution of the impugned judgment and decree possession of the suit property has already been taken.

5. This Court vide order dated 16.8.2011 dismissed a third application for stay of the impugned judgment and decree by observing as under:-

“CM No.15173/2011(exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

+ CM NO.15172/2011 in RFA No.332/2011

1. This is a third application in a period of about one and half months filed in an RFA effectively for stay of operation of the impugned judgment. Whether the prayer is for stay of the judgment or stay of the execution, effectively same relief is now being sought for the third time. Firstly, this appeal came up on 5.7.2011, when, in CM No.11988/2011, the statement of the counsel for the appellants was recorded that interim orders were not being pressed. This was recorded after the counsel was heard. In fact, another reason for declining interim orders was that there was a huge delay of 339 days in filing of the appeal. The appellants were not satisfied by declining of the interim orders and once again for the second time on 8.8.2011, an application for stay was filed and which was once again dismissed. Now a new counsel, led by a senior, has again filed a third application for pressing the same stay. The reasons were not given on the very first date because counsel for the appellants had not pressed for the interim orders. Since the interim orders are being pressed, I am giving the reasons for declining the interim orders. The subject suit was a suit for possession and injunction which was decreed. The respondents no. 1 and 2 filed the suit for injunction and possession on the ground that the respondent no.1 was the owner of the property having purchased it on 4.4.1985. The appellants however claimed ownership of the property. The respondents no.1 and 2/plaintiff, alleged that the appellants took

forcible possession of the property and therefore the subject suit was filed. The Trial Court after framing of the issues set the case down for evidence, however, the defendant no.2 after tendering his affidavit did not turn up for cross-examination, and even the other defendants failed to lead any evidence despite several opportunities. Thus while respondents no. 1 and 2/plaintiffs led evidence, but, the appellants led no evidence. The Trial Court has relied upon the sale deed in favour of the respondent no.1 which has been exhibited as Ex.PW1/2 and also the khasra girdawaris showing possession of the respondent no.1 as Ex.PW6-A and PW6-B. The Trial Court also relied upon report of the Local Commissioner which showed that the appellants had in the recent past taken forcible possession as the name of the respondent no.1 was shown after wiping of the paint which has recently been put on the wall.

2. In my opinion, a third innings, more so, when the appellants/defendants led no evidence is quite clearly a gross abuse of process of law. Merely because one set of counsel have failed to obtain an interim order, is no ground for approaching the Court again in a period of about one and half months by filing a third application for stay through new counsel when interim orders have been refused twice earlier and the matter is listed for being returnable on 20.10.2011. The present application is therefore dismissed with costs of Rs.15,000/- which shall be payable to the Registrar General of this Court for being utilized towards juvenile justice. Costs be paid within 2 weeks from today.”

6. As per the report of the Registry, costs of ₹15,000/- imposed vide order dated 16.8.2011 have also not been deposited. Accordingly, the present appeal, as also the stay application, is dismissed for non-prosecution

under Section 35B of Code of Civil Procedure, 1908. The appeal is also dismissed by refusing to condone the delay and dismissing C.M. No. 11989/2011.

7. The present appeal is, accordingly, dismissed. Let no application for restoration/recall of this order be entertained by the Registry unless costs of ₹30,000/- are first paid to the respondents/plaintiffs.

C.M. No. 12836/2011 (under Section 340 Cr.P.C)

This application is dismissed as not pressed at present.

VALMIKI J. MEHTA, J.

FEBRUARY 01, 2012

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