

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

Date of decision: 25th September, 2013.

+ **RFA 414/2013, CMs No.13529/2013 (for condonation of 3 years 2 months & 6 days delay in filing the appeal) & 13531/2013 (for condonation of 3 days delay in re-filing the appeal)**

SATNAM CHAND KOHLI **Appellant**
Through: Mr. J.S. Vohra, Advocate.

Versus

SRI NATH MALHOTRA **Respondent**
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree dated 18th March, 2010 of the Court of Additional District Judge (ADJ)-03, (North) Delhi of dismissal of Civil Suit No.305/2008 (instituted on 20th November, 1997) filed by the appellant for recovery of Rs.7,02,000/- from the respondent/defendant on account of repayment of loan of Rs.4 lakhs.
2. The appeal is accompanied with an application for condonation of 3 years 2 months and 6 days delay in filing the same and with yet another application for condonation of 3 days delay in re-filing the appeal.
3. The reason given for the inordinate delay in filing the appeal is:

- (i) that the appellant/plaintiff was not keeping good health in the year 2009 and his health deteriorated regularly further down with the result that the appellant/plaintiff had even been operated thrice during the year 2012 starting from 1st January, 2012 to 24th March, 2012;
- (ii) that the appellant/plaintiff was almost a bed ridden person from the start of the year 2010 with the result that the appellant/plaintiff could not apply for the certified copy of the judgment and decree himself;
- (iii) that the counsel for the appellant/plaintiff had applied for the copy of the judgment but not for decree;
- (iv) that the decree sheet could not have been ready at that time;
- (v) that since January/February, 2010 the appellant/plaintiff had been bed ridden with various ailments of abdominal region regarding which some medical records are filed with the application;
- (vi) that the ailments became worse in the year 2011 and the appellant/plaintiff was hospitalized on 1st January, 2012 for operation; that the appellant/plaintiff who was about 70 Kg. in 2009 is now just weighing 50 Kg. and is unable to move much;

(vii) that the appellant/plaintiff with great difficulty through his brother Mr. Kirpal Kohli contacted his lawyer for filing the appeal on 28th November, 2012 but the appellant/plaintiff could not contact his lawyer personally so as to give instructions;

(viii) that it was only after middle of May, 2013, the appellant/plaintiff could approach the counsel;

(ix) that the certified copies were then obtained from the earlier Advocate when it was realized that the decree sheet was not available and hence another application for certified copy of the decree sheet was filed;

(x) that it was then learnt that the decree sheet had not been prepared and the present appeal is being filed as early as possible.

4. The appellant/plaintiff, along with the application for condonation of delay in filing the appeal, has filed:

(a) a Discharge Summary of a private hospital showing date of admission as 26th November, 2009 and date of discharge as 1st December, 2009 and showing the reason for admission as 'acute breathlessness' and diagnosis as 'acute pulmonary oedema'. The said Discharge Summary does not show any advice for bed rest to the

appellant/plaintiff;

(b) Discharge Summary of a private hospital showing date of admission and date of discharge as 5th April, 2011 and 8th April, 2011 respectively and showing the reason for admission as ‘loss of consciousness for about 10-12 minutes’ and again not showing any advice for bed rest;

(c) Transfer Summary of a private hospital showing the date of admission and date of transfer as 1st January, 2012 and 8th January, 2012 respectively and showing the reason for admission as “ghabrahat, vomiting & pain”;

(d) Discharge Summary of Sir Ganga Ram Hospital showing the date of admission and date of discharge as 17th January, 2012 and 19th January, 2012 respectively and the appellant/plaintiff having undergone the incisional drainage procedure; the physical activity advised to the appellant/plaintiff therein is “normal activity”;

(e) Discharge Summary of Sir Ganga Ram Hospital showing the date of admission and date of discharge as 21st February, 2012 and 23rd February, 2012 and the appellant/plaintiff having undergone debridement of wound and again advising “normal physical activity”

to the appellant/plaintiff;

(f) Discharge Summary of Sir Ganga Ram Hospital showing the date of admission and date of discharge as 2nd March, 2012 and 4th March, 2012 respectively and the appellant/plaintiff having undergone debridement with secondary suturing of wound and again advising “normal physical activity” to the appellant/plaintiff.

Besides the aforesaid, the appellant/plaintiff has filed a large number of other documents being the reports of pathological and radiological examination of the appellant/plaintiff during the period of his admissions aforesaid to the hospitals and in between also.

5. The appeal along with these applications came up first before this Court on 3rd September, 2013 when, finding that the appellant/plaintiff had not given any explanation whatsoever as to why, even if he was ill, the task of preferring of the appeal could not have been undertaken by any other family member of the appellant/plaintiff, it was enquired from the counsel for the appellant/plaintiff as to why the appeal could not have been so filed by any other person or even by the brother of the appellant/plaintiff who was at one stage asked to do so. The counsel for the appellant/plaintiff stated that the appellant/plaintiff is carrying on business as a jeweller but

had not been attending to his business also during the said time of which condonation of delay is sought; on further enquiry, as to whether the business was shut down during the said period, the counsel stated that the business was being carried on by the same brother of the appellant/plaintiff.

6. Being of the view that when other worldly affairs of the appellant/plaintiff could go on during the said period of his illness, so could the appeal be filed and if grounds of illness as aforesaid were to be considered for condonation of delay, it would be as good as writing off the Limitation Act, the appellant/plaintiff was given an opportunity to file an affidavit giving particulars of the members of his family who were staying with him and explaining as to why the appeal could not be got filed through them.

7. The appellant/plaintiff has in response thereto filed an affidavit dated 12th September, 2013 stating that his younger brother has been looking after the joint business of jewellers in the name and style of M/s. Kohli Gems & Jewellers; that the suit from which this appeal is arises was however looked after by the appellant/plaintiff himself and the appellant/plaintiff had not told about the same to anybody else including his sons and wife because the sons of the appellant/plaintiff are extravagant and would spend all his

money if they knew that he was having some amount with him; that the younger brother is financially sound and was looking after the appellant/plaintiff as well as the old mother; that though the said brother in the year 2010 had contacted the Advocate to file the appeal but the Advocate stated that he would file the appeal only on the instructions from the appellant/plaintiff; that the appellant/plaintiff has been totally physically disabled from the beginning of the year 2010 till May, 2013 for filing the appeal; that though the sons of the appellant/plaintiff are aged about 26 and 21 years but he has never relied upon them; that the wife and sons of the appellant/plaintiff also have to attend to the appellant/plaintiff as well as the old mother of the appellant/plaintiff.

8. The appellant/plaintiff has also filed the affidavit of his brother on the same lines.

9. An analysis of the medical records of the appellant/plaintiff does not show the appellant/plaintiff to have been throughout the said period of over three years, been admitted to hospital or having been advised bed rest for the entire said period. Rather, the advice in each of the aforesaid summaries of the hospital at the time of discharging the appellant/plaintiff is for the appellant/plaintiff to indulge in “normal physical activity”. In the face of the

said records filed by the appellant/plaintiff himself, the plea of the appellant/plaintiff of being continuously bed ridden for the entire period of delay in filing the appeal, cannot be believed.

10. The suit from which this appeal arises was for recovery of monies which the appellant/plaintiff claimed to have advanced as loan. The learned ADJ in the impugned judgment has concluded that the appellant/plaintiff had not advanced any loan to the respondent/defendant.

11. I have wondered, whether no finality is to be permitted to be attained to such monetary claims also, though the law i.e. The Limitation Act, 1963 provides a limitation of 90 days only for appealing thereagainst.

12. The Supreme Court recently in *Basawaraj Vs. The Special Land Acquisition Officer* MANU/SC/0850/2013 has reiterated:

A. that ‘sufficient cause’ is the cause for which Defendant could not be blamed for his absence;

B. that the word ‘sufficient cause’ means that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has not acted diligently or remained inactive;

- C. that the discretion has to be exercised judiciously;
- D. that the applicant must satisfy the Court that he was prevented by sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay;
- E. that the Court has to examine whether the mistake is *bona fide* or to cover an ulterior purpose;
- F. that though the expression 'sufficient cause' should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of *bona fides* cannot be imputed to the party concerned;
- G. that though the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes;
- H. that the Court has no power to extend the period of limitation on equitable grounds;
- I. that the result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it

considers a distress resulting from its operation;

J. that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same;

K. that the Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale;

L. that an unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches;

M. that if a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or is found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay;

N. that no Court could be justified in condoning an inordinate

delay by imposing any condition whatsoever.

13. Applying the aforesaid principles, the inaction and the want of *bona fide* of the appellant/plaintiff is writ large. It is not as if, all the worldly affairs of the appellant/plaintiff had come to an end owing to the illness, giving reason whereof, the inordinate delay of 3 years, 2 months and 6 days in filing the appeal is sought to be condoned. There cannot be different parameters adopted by a party for the purpose of pursuing a lis and for pursuing other more profitable ventures. Once, it is found that the appellant/plaintiff continued to carry on business during the said time, there is no reason to condone the delay in filing the appeal. If the brother of the appellant/plaintiff could be trusted with the business, so could he be trusted with the filing of the appeal also. Moreover, for an appeal, which is filed on the basis of the record of the Trial Court, no detailed instructions from the litigant are needed. It is worthwhile to mention that the appeal is not accompanied by any application for leading additional evidence.

14. The aforesaid, is without prejudice to my observation aforesaid of the medical record relied upon by the appellant/plaintiff itself not showing the appellant/plaintiff to be suffering from any such disability so as to prevent him from filing the appeal. If all illnesses were to form 'sufficient cause'

for condoning delay, it would be as good as doing away with the law of limitation.

15. No sufficient cause for condoning the inordinate delay of 3 years, 2 months and 6 days is thus found. The applications for condonation of delay in filing and re-filing the appeal and resultantly the appeal are therefore dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 25, 2013

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