

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

% **Date of decision: 30th July, 2013**

+ **RFA 30/2013**

**MAHARANI BAGH RESIDENT WELFARE
ASSOCIATION**

..... Appellant

Through: Mr. Atul Nigam & Mr. Sumit Jidani, Advs.

versus

MCD AND ORS

..... Respondents

Through: Mrs. Biji Rajesh for Mr. Gaurang Kanth,
Adv. for MCD.
Mr. Pawan Mathur, Adv. for DDA.
Mr. Prakash Chandra, Adv. for R-3 to 8.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

CM No.729/2013 (of the appellant for condonation of 54 days delay in re-filing the appeal).

1. Replies have been filed by the respondents no.3 to 8. The counsel for the respondents no.3 to 8 appears and has opposed the application.
2. The counsels for the respondent no.1 MCD and the respondent no.2 DDA have not opposed the application.
3. The counsel for the respondents no.3 to 8 has contended that even the filing of the appeal was beyond time.
4. However the computation done by the Registry at the time of the first filing of the appeal shows the same to have been within time. No error

therein is pointed out. It thus cannot be accepted that there is delay in filing the application also.

5. The counsel for the respondents no.3 to 8 has further contended that the reasons given for delay in re-filing are vague; that the entire blame has been put on the clerk of the Advocate and whose affidavit also has not been filed; that the appellant/plaintiff has been throughout negligent and deserves no indulgence. It is further informed that though review of the order impugned in the appeal was sought but even that was beyond time and has *inter alia* been dismissed on the said ground.

6. The reason given by the appellant/plaintiff for delay is that the objections were removed on return of the appeal pursuant to first filing and the appeal handed over to the clerk for re-filing; that the clerk had to go to his village and thus the delay.

7. Though of course the application is not very well drafted and does not give details and particulars as ought to have been given, but it is felt that the appellant ought not to be penalized for the defect in drafting.

8. Accordingly, the delay in re-filing is condoned subject to payment of costs of Rs.10,000/- to the counsel for the respondents no.3 to 8 within four weeks of today. If the costs are not so paid, the application shall be deemed to be dismissed and resultantly the appeal shall also be deemed to have been dismissed.

9. The application stands disposed of.

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10. Issue notice.

11. Notice is accepted by the counsels for the respondent no.1 MCD and respondent no.2 DDA and the respondents no. 3 to 8.

12. None appeared for the respondent no.9 despite service of the notice of CM No.729/2013 supra. Need is not felt to issue fresh notice of the appeal.

13. Though the Trial Court record has not been requisitioned and the appeal not formally admitted for hearing but considering the nature of the controversy involved, the appeal, with the consent of the counsels, is taken up for hearing today itself.

14. The Trial Court vide its order dated 17th August, 2009 on a preliminary issue as to the valuation framed in the suit filed by the appellant, held the appellant/plaintiff to have not affixed the appropriate Court Fees on the plaint and gave an opportunity to the appellant/plaintiff to make up the deficiency in Court Fees.

15. The appellant/plaintiff preferred CM(M) No.1191/2009 before this Court against the said order of the Trial Court and of which notice was issued. However the said CM (M) petition was ultimately dismissed vide order dated 27th March, 2012 with costs of Rs.10,000/-.

16. The suit thereafter was listed before the Trial Court on 30th April, 2012 when none appeared on behalf of the appellant/plaintiff. However an opportunity was given to the appellant/plaintiff to make up the deficiency in

Court Fees and the suit adjourned to 10th May, 2012. On 10th May, 2012 also the counsel for the appellant/plaintiff did not appear and sent a proxy to seek an adjournment. The Trial Court, finding that the appellant/plaintiff had not paid the costs of Rs.10,000/- imposed upon it while dismissing the CM (M) petition and further finding that the appellant/plaintiff had not paid costs of Rs.5,000/- imposed by the Trial Court vide order dated 5th October, 2009 and had not even made up the deficiency in Court Fees and finding no ground to adjourn the suit, held the appellant/plaintiff to be deliberately avoiding to comply with the orders and accordingly dismissed the suit for non-prosecution. Aggrieved therefrom, this appeal is filed.

17. This appeal came up first before this Court on 14th January, 2013 when the appellant/plaintiff, to show its *bona fides*, was given an opportunity to deposit the deficient amount of Court Fees in this Court. An amount of Rs.1,51,350/- has been deposited and which has been ordered to be kept in a Fixed Deposit.

18. The counsel for the appellant/plaintiff has of course sought to justify the defaults aforesaid for the reason whereof the suit was dismissed for non-prosecution.

19. The counsel for the respondents no.3 to 8 opposes and contends that the entire conduct aforesaid shows that the appellant/plaintiff is not serious in pursuing the suit and the same is being kept pending merely to harass the respondents.

20. The suit from which this appeal arises pertains to immovable property. Though the appellant/plaintiff undoubtedly has been negligent but it cannot be lost sight that the appellant/plaintiff is a Welfare Association of a residential colony and in which none can be said to be having a personal interest. The counsel for the respondents no.3 to 8 of course contends that the appellant/plaintiff is a one man affair and guided by personal motives and not for the benefit of all the residents of the colony. However the said questions have to be determined by the Trial Court and not here. All that can be observed is that in the entirety of the facts and circumstances, it is deemed appropriate to grant another opportunity to the appellant/plaintiff but subject to, i) payment of costs of Rs.50,000/- to the counsel for the respondents no.3 to 8 together with the previous costs of Rs.15,000/- as well as costs of Rs.10,000/- imposed hereinabove i.e. total Rs.75,000/- within four weeks of today; ii) filing the deficient stamp duty before the trial court within four weeks of today; and, further with a caution that the appellant/plaintiff shall not be entitled to any further indulgence and upon the appellant/plaintiff failing to take the requisite steps in the suit at any stage in future, it will be open to the learned Addl. District Judge before whom the suit may be pending to make adverse order against the appellant/plaintiff.

21. The appeal is allowed on the aforesaid terms. The order dated 10th May, 2012 of dismissal of the suit for non-prosecution is set aside and the suit is restored to its original position.

22. Decree sheet be drawn up.

23. The amount deposited by the appellant/plaintiff in this Court together with interest accrued thereon be refunded to the appellant/plaintiff.

24. The parties to appear before the learned Addl. District Judge, Central-7, Delhi and/or the District Judge, Central, Delhi on 17th September, 2013.

25. The counsel for the respondents no.3 to 8 states that copy of the amended plaint has not been supplied to him. The same be also supplied to the counsel for the respondents no.3 to 8 as well as the counsels for the respondents no.1&2 within four weeks.

RAJIV SAHAI ENDLAW, J

JULY 30, 2013

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