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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.1 of 2012 & C.M. No.289/2012

Decided on : 2nd April, 2013

MEHTAB SINGH Appellant
Through: Mr. H.S. Dahiya, Advocate.

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jaswinder Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal under Section 100 CPC against the judgment and decree dated 28.8.2010 passed by the learned Additional District Judge, (Central District 13), Tis Hazari Courts in R.C.A. No.91/2009 titled Union of India & Ors. vs. Mehtab Singh by virtue of which the judgment and decree dated 4.9.2009 passed by the learned Senior Civil Judge cum Rent Controller, Central Delhi, was set aside and the suit filed by the appellant/plaintiff was dismissed.

2. It may be pertinent here to mention that the appellant/plaintiff had filed a suit for declaration praying therein for setting aside his order of

dismissal from service dated 21.7.2000 and the order of the appellate authority confirming the dismissal passed on 9.3.2001.

3. The regular second appeal has been filed along with the application (C.M. No.289/2012) seeking condonation of 366 days' delay in re-filing, although, it has been averred in the application that the original filing of the appeal was done within the period of limitation. In the application seeking condonation of delay in re-filing it is alleged that the judgment was passed on 28.8.2010 and the appeal was filed on 30.11.2010 challenging the judgment dated 28.8.2010. Since the objections were raised to the appeal, it was collected from the Registry and re-filed on two occasions on 7.12.2010 and 16.12.2010. It is further alleged that third time also there were objections and accordingly, the appeal was collected from the Registry on 22.12.2010, that is, one day before the winter vacation. It is stated that the departmental proceedings which were initiated against the appellant were in Hindi and their English translation was to be filed and the file was not traceable in the lawyer's office. It is stated that the counsel for the appellant applied for certified copy of the entire file of appeal in the court of the learned Additional District Judge

on 25.3.2011 and the certified copy was made available on 30.3.2011. It is further stated that inadvertently, the trial court record was not obtained with the result whatever documents were available with the appellant, were handed over to the counsel for the purpose of getting them translated. In the meantime, the case file got tagged mistakenly with some disposed of cases/files, and these files were shifted from old chamber at Tis Hazari to the store at his residence. It is stated that the file was traced only in the month of December, 2011 and this occasioned delay of 366 days' in re-filing the appeal.

4. In the delay application it has nowhere been said that the delay had been occasioned on account of reasons beyond the control of the appellant or for the reasons which constitute 'sufficient cause' for condonation of delay. The application was supported by an affidavit of the appellant as well as Mr. H.S. Dahiya, Advocate.

5. The respondent filed reply to the application and contested the stand of the appellant. It was stated in the reply that the appellant had been grossly negligent in pursuing the appeal. According to the admission made by the appellant himself, the appeal was filed three times before the

courts rose for winter vacation and even on these three occasions, the objections could not be removed. The appellant had admittedly collected the copy of the appeal lying in objection on the last working date before the winter vacation and chosen to remain silent till 25.3.2011 when certified copy of the appellate court's record was applied. Even at that stage, the record of the trial court was not applied for. It has also been stated that it is a common knowledge that the entire record is not required to be filed, what is required to be filed along with the second appeal, is the documents on which the appellant is relying on. A prayer could have been made by the appellant for requisition of the trial court record. It is further stated that the explanation given by the appellant is neither *bona fide* nor convincing which may constitute the sufficient cause. Accordingly, it is prayed that the application for condonation of delay be dismissed.

6. I have carefully considered the submissions and gone through the record. There is no doubt about the fact that according to Rule 5 of Chapter I Part A(a), Delhi High Court Rules, once an appeal is collected from the filing counter and the objections raised by the Registry, the re-

filing has to be done within a period of seven days and this period cannot exceed more than 30 days in all. The necessary rule in this regard reads 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 XLI, Rule 3 CPC.

(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 the 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, Assistant Registrar in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.”

7. In the instant case, the appellant had admittedly filed the appeal three times before finally collecting the appeal in objection on 22.12.2010. In these three filings, he was not able to remove all the objections. Even after one day prior to the rising of the courts for winter vacation, the appellant did not make any effort to obtain the record of the

trial court or the appellate court for almost three months as according to the appellant himself, the certified copy was applied only on 25.3.2011 although the appeal was collected from the Registry in the month of December, 2011. The appellant has not given any cogent explanation as to why he remained silent for a period of three months after collecting the paper book. Even from March, 2011 when the certified copy was applied, till the month of December, 2011 when the appeal is stated to have been traced, no explanation has been given as to what efforts were made by the appellant. Therefore, this seems to be only a cooked up story setup by the appellant for the purpose of covering up his negligence in handling the matter and filing of the appeal. The *bona fides* of the appellant are suspect.

8. No doubt, the Apex Court in number of judgments has construed the word ‘sufficient cause’ liberally and pragmatically but nevertheless, the concept of ‘sufficient cause’ has not been interpreted to stretch to such an extent where undue premium is put to the gross negligent conduct of the appellant in condoning the delay.

9. In the instant case, from the sequence of events narrated by the appellant in the delay application, I am fully convinced that the appellant had been most negligent in pursuing the appeal. I feel that he had accepted the finding returned by the first appellate court setting aside the order passed by the trial court by virtue of which the order of dismissal was set aside by the trial court. It seems that it is only belatedly on the advice of some counsel that he chose to file the present regular second appeal and the counsel has very willingly furnished the affidavit in order to lend some credence to the story having been setup by the appellant for the purpose of condonation of delay. I am not convinced at all. The delay which has occasioned in re-filing has to be treated as delay in original filing as it is more than 30 days for which no 'sufficient cause' has been shown by the appellant.

10. Accordingly, the application of the appellant is disallowed. Since the application seeking condonation of delay is disallowed, the appeal itself becomes time-barred and accordingly, the appeal is dismissed.

V.K. SHALI, J.

APRIL 02, 2013/'AA'