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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 754-56/2005

S.K. MALHOTRA & ORS.

..... Appellants

Through: Appellant no. 1 in person (Mobile No. 9818630372).

versus

NINA MALHOTRA & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% 20.12.2018

C.M. Appl. No. 53866/2018 (for condonation of delay of 17 days in re-filing the application for restoration being C.M.No. 53864/18)

1. Allowed, subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 53864/2018 (for restoration) and C.M. Appl. No. 53865/2018 (for condonation of delay of 1375 days in filing restoration application)

2. Three applications are listed today before this Court.

One is the application for restoration being ***C.M. Appl. No.***

53864/2018. The second application is for condonation of delay of 17

days in re-filing the application for restoration being ***C.M. Appl. No.***

53866/2018. The third application is for condonation of delay of

1375 days in filing the application for restoration being ***C.M. Appl. No. 53865/2018.***

3. The present appeal was filed against the impugned judgment of the trial court by which the trial court had dismissed the suit for specific performance filed by the appellants/plaintiffs. In fact, it is noted that the suit property had been transferred further by a registered sale deed to a third party purchaser who was impleaded as a defendant in the suit. The original suit itself took 20 years to decide and the same is written in the very first few lines of the impugned judgment.

4. This appeal was dismissed in default on 15.12.2014 and today we are on 20.12.2018.

5. Before I turn to the restoration application, it bears note that this appeal right from day one i.e. the filing of the appeal, and in over a dozen order sheets of this court, shows that no Advocate had appeared for the appellants and appellant no. 1 has pursued this appeal in person. The order sheets showing the appearance of appellant no. 1 in person are in all the order sheets from 28.10.2005 till 11.03.2011 and it is only when the appeal was dismissed in default

on 15.12.2014, that there was no appearance on behalf of the appellants through the appellant no. 1 who appeared in person on all other earlier dates of hearings. Therefore, it is seen that no Advocate has ever appeared for the appellants in this appeal, and which was being argued and pursued by appellant no. 1 in person for all the appellants/plaintiffs.

6. In spite of such facts as aforesaid, in the present applications for restoration and condonation of delay, the appellant no. 1 who has filed the application for restoration, has resorted to blatant name throwing of four Judges of this Hon'ble Court, and who have had nothing whatsoever to do with the present appeal. In order to appreciate the complete lack of judicial propriety, and amounting to in fact contempt of court on behalf of the appellants through the appellant no. 1, this Court reproduces paras 1 to 4 of the application for restoration, and these paras read as under:

“1. After filing the above noted appeal way back in the middle of 2005 and making a few appearances in the year 2011, the above noted appeal had been entrusted for arguments by appellants to Shri Sanjeev Sachdeva, Senior Advocate – as his Lordship then had been. The said Shri Sanjeev Sachdeva Advocate had also been engaged by plaintiffs/appellants at evidence stage in prosecuting Suit No. 2677/1896 titled ‘Suresh Kumar Malhotra and others Vs. Gujral Estates Pvt. Ltd’. Prior to that, the said Suit No. 2677/1986 was being handled on behalf of plaintiffs/appellants by Shri Pradeep Nandrajog, before his elevation to the bench.

2. Prior to its transfer to Tis Hazari District Courts, the suit giving rise to the above noted appeal was being tried as Suit No. 153/1987 on the original side of Delhi High Court. At the evidence stage, the said Suit No. 153/1981 was being handled on behalf of plaintiffs/appellants by the following advocates:-

(i) Ms. Gita Maittal

(ii) Shri Swatanter Kumar

3. As a result of elevation of four different lawyers engaged by plaintiffs/appellants from time to time, they got extremely handicapped in prosecuting their legal matters, Viz. Suit No. 2677/1986 as well as the above noted appeal.

4. That to their ill luck, plaintiffs/appellants got deprived of assistance of all these counsels, who got elevated to the bench one after another in succession.”

7(i). This Court clearly fails to understand as to how at all the appellant no. 1 could have put in writing the names of the four Hon’ble Judges of this Court when in no manner whatsoever the said four Hon’ble Judges were ever engaged for this appeal. Names of two of the Hon’ble Judges as mentioned in para 2 of the application are those who had in fact become Judges even prior to filing of this appeal. So far as the name of the third Hon’ble Judge mentioned in first part of para 1 of the application for restoration is concerned, it is seen that out of over a dozen order sheets of this appeal, the presence of the said Hon’ble Judge mentioned in para 1 of the application is not found to be recorded. In fact, there is no *vakalatnama* of the

Hon'ble Judge filed in this court whose name is stated in para 1 of the application.

7(ii). Therefore, names of the Hon'ble Judges mentioned in paras 1 and 2 of the application have at no point of time had ever had anything to do with this appeal, but inspite of that, the appellant no. 1 in a deliberately *malafide* and malicious fashion has put in writing names of Hon'ble Judges of this Court only to suit his purpose for getting the appeal restored which was dismissed in default not some time back but way back on 15.12.2014, and therefore, condonation of delay of 1375 days is also sought for filing of the restoration application.

8. It is also conceded on behalf of the appellant no. 1 that appellant no. 1 is also appearing in person in another litigation being a civil suit pending in the Original Side of this Court being ***Suit No. 2677/1986***, and this is mentioned by the appellant no. 1 in the last line of para 1 of the restoration application, although the said suit has nothing to do with the present appeal, and the factum of the name of the fourth Hon'ble Judge which is mentioned in the last line of para 1 of the application is only for less than honest purpose, by also noting

that the said Judge had become a Judge way before the present appeal was filed in the year 2005.

9(i). Therefore, a reading of paras 1 to 3 of the application show that the names of the four Hon'ble Judges of this Court have been unnecessarily referred to. The name of one Hon'ble Judge written in the last line of para 1 of the application has in fact never had anything whatsoever to do with the present appeal or the suit from which this appeal arises, as it is conceded that the said Hon'ble Judge was a counsel for the appellants in another completely unconnected legal proceeding being ***Civil Suit No. 2677/1986*** and which is pending in the Original Side of this Court.

9(ii). As already stated above, so far as the two Hon'ble Judges mentioned in para 2 of the application is concerned, the said Hon'ble Judges again have nothing to do with the present appeal as they became Judges much prior to filing of this appeal in the year 2005.

9(iii). So far as the name of the first Hon'ble Judge mentioned in the earlier part of para 1 of the application is concerned, it is seen that though the appellants seek to bring in the said name, there is not a single appearance of the Hon'ble Judge as an Advocate in this appeal

right from the year 2005 till the appeal was dismissed in default on 15.12.2014, with the fact that admittedly there is no *vakalatnama* filed of the said Hon'ble Judge when he was an Advocate. In any case, reference to the first Hon'ble Judge is with his designation as a Senior Advocate and obviously therefore the said Hon'ble Judge would not be in any manner concerned with listing of the case.

10(i). The grounds which are urged on behalf of the appellants for restoration of this appeal, and for condonation of delay, are that they are aged persons and not computer savvy and that they were hoping that Court Notices would be issued to them for hearing of the appeal.

10(ii). Once again these self-serving averments are deliberately made only to justify non-pursuing of this appeal, inasmuch as and as already stated above, appellant no. 1 is in fact also personally appearing and pursuing the ***Civil Suit No. 2677/1986*** which is pending in the Original Side of this Court, and is therefore otherwise well-versed with the corridors of the Court as also the processes of the Court. Appellant no. 1 on a query of the Court concedes that he has personally come to the Delhi High Court at least around three dozen

occasions in the last many years.

10(iii). One does not have to be computer savvy just to find out about the listing and hearing of a case because even if one is not computer savvy, it is not as if through any other person the appellants could not have traced out the status of this appeal from the website of this Court and which is accessible 24 X 7 and 365 days of the year. It just takes but a click of a few buttons to note the status of any case in this Court. How the self-serving averments really make out no justification or the existence of sufficient cause, therefore the paras 5 to 7 of the restoration application are reproduced as under:

“5. As is the case with most persons of their vintage, the appellant no. 1 aged 76 years prosecuting the matter and his wife aged 72 years are not computer savvy. As a consequence thereof, the appellant no. 1 prosecuting the matter had been left with no other option, except to make occasional verbal queries with the branch (appeal) to ascertain as to when the appeal is likely to come up for hearing.

6. As the order sheet indicates, appellants had only been appearing in person prior to dismissal in default of the appeal on 15.12.2014. Appellants had somehow been given to understand – rightly or wrongly – that since they had been appearing in person all this while, the appellate court would issue notice of hearing of the appeal before it resorts to its dismissal in default.

7. Vide diary No. 371843 dated 11.10.2018, appellants had filed an application for categorizing the above noted appeal in the category of cases of person above 75 years of age’. On filing the said application {C.M.}, appellants became aware of the fact that their appeal had been dismissed in default in their absence. The moment appellants became aware of the said dismissal in default, they took prompt steps to file the present application for its restoration.”

11. It is therefore clear that the appellants have not shown any sufficient cause for restoration of this appeal which was dismissed way back on 15.12.2014 and the appellants have also not shown any cause for condonation of the huge delay of 1375 days, more so when the appeal itself was filed and always pursued in person by the appellant no.1, and who was also appearing in person in another litigation in this Court being ***Civil Suit No. 2677/2018***.

12. Finding no sufficient cause for restoration, appellant no. 1 has chosen to literally misuse the names of four Hon'ble Judges of this Court who have had nothing to do with this present appeal, and especially the three Hon'ble Judges who are the Judges much prior to filing of this appeal in the year 2005.

13. Therefore, these applications for restoration of the appeal and condonation of delay are completely meritless and are dismissed with costs of Rs. 1,00,000/- payable by the appellant no. 1 with the website www.bharatkeveer.gov.in within two weeks from today.

14. In view of the blatant conduct of the appellant no. 1, this Court also deems fit that a notice of contempt be issued to the appellant no. 1, and who is seeking to put judicial process in disrepute

by unnecessarily mentioning the names of the Hon'ble Judges in this application, who have had nothing to do with the present appeal, and the names of Judges have been referred only to either influence this Court or to get some benefit for the purpose of restoration of this appeal which was dismissed way back and for condonation of the delay of 1375 days.

15. Appellant no. 1 who is present in person accepts the notice of contempt. Appellant no. 1 will reply to the notice of contempt within six weeks from today.

16. Limited to the aspect of contempt of court proceedings against the appellant no. 1, list on 14th February, 2019.

DECEMBER 20, 2018

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VALMIKI J. MEHTA, J