

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 854 of 2023

Appellant :- General Manager Punjab National Bank , New Delhi And Others

Respondent :- Gyan Prakash

Counsel for Appellant :- Mayank Pathak

Counsel for Respondent :- Laxmi Kant Pathak

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

C.M.A. No.1 of 2023 (Application for condonation of delay)

1. Heard Shri Mayank Pathak, learned Counsel for the appellants and Shri Laxmi Kant Pathak, learned Counsel for the respondent.

2. There is reported delay of 70 days in filing the present intra-court appeal under Chapter VIII Rule 5 of the High Court Rules. The appeal is accompanied with an application for condonation of delay supported by an affidavit.

3. Learned Counsel for the respondent does not have any objection if delay of 70 days in filing the special appeal is condoned.

4. Cause shown being sufficient and in absence of any objection, the application for condonation of delay is allowed and the delay in filing the appeal is hereby condoned.

Order on Appeal

5. This intra-court appeal filed Chapter VIII Rule 5 of the High Court Rules is directed against the judgment/order dated 21.07.2023 passed in Writ-A No.572 of 2013.

6. In paragraph 5 of the memo of appeal, it is submitted that the petitioner had died much prior to the date of judgment. The

record reveals that the judgment in the case was reserved on 17.05.2023 and the same was delivered on 21.07.2023. The date of death of the respondent-petitioner is stated to be 24.12.2022, which is wrongly transcribed in paragraph 5 of the memo of appeal as 21.12.2022. The appellants in support of this information has relied upon the death certificate issued on 21.07.2023 and the photocopy of the same is taken on record.

7. In view of the fact that the deceased respondent-petitioner had died during the pendency of the writ petition, therefore, the proceedings as on the date of hearing of the matter had already abated. Without making any further comment on the legality of the judgment impugned herein, we leave it open to the appellants to make an appropriate application of review/recall/modification of the judgment impugned herein in this appeal so that the Writ Court may pass necessary orders in accordance with law. The application so filed shall also take into account as to whether the cause agitated in the writ petition as a consequence of the death of the respondent-petitioner therein would survive or not.

8. In view of the liberty as above, the special appeal is accordingly **disposed of**.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 2.11.2023

Anand Sri./-