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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.47/2015

Decided on : 3rd February, 2015

SH.RAM KISHORE

..... Appellant

Through: Mr. Manish Batra, Advocate.

Versus

SMT.ANGOORI DEVI

..... Respondents

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM No.1888/2015

1. Allowed subject to deficiency being rectified.
2. The application stands disposed of.

RSA No.47/2015

CM No.1886/2015 (Condonation of Delay of 267 days)

1. This is a regular second appeal filed against the order of the trial court and the first appellate court dated 19.02.2014 & 23.04.2014 respectively.
2. There is a delay of 267 days in filing the instant appeal.

3. The explanation which has been furnished in the application is that the appellant is aged around 67 years and suffering from old age problems like memory loss etc. because of which he is having limited mobility. It has been stated by him that on 01.05.2014, he had handed over brief pertaining to the instant matter to his eldest son, namely Mr.Sanjay Kumar and specifically instructed him to initiate further prosecution and accordingly engage the services of some lawyer. It has been stated on 15.05.2014, Mr.Sanjay Kumar got a few typed papers signed from the appellant and told the appellant that the same pertained to second appeal to be filed on 16.05.2014 before this court. It is further stated that on 22.05.2014 an ugly feud erupted at the appellant's household in view whereof his aforesaid son Mr.Sanjay Kumar in a sudden and regrettable manner left the household along with his entire belongings and purportedly shifted to some unknown place. It has been stated after the said date, neither the appellant could contact his son nor his son has done the same thing. It is stated that only on 13.01.2015 the appellant's daughter namely Ms.Sushila Devi w/o Sh.Ram Parshad R/o 5464, Gali No.71, Dev Nagar, Karol Bagh, New Delhi came to the appellant and handed him over the entire brief pertaining to the instant

matter which had been delivered at her residence by some unknown person on 12.01.2015. The application has been supported by the affidavit of the appellant and Ms.Sushila Devi.

4. The reasons which are given by the appellant for delay do not inspire any credence regarding its genuineness. Merely, because the appellant was suffering from old age problems, he could not simply rely on his son only to ensure that the appeal is filed. He should have taken personal interest in the matter and pursued the same when he had contested the proceedings for all these years before the trial court and the first appellate court. The appellant has also not disclosed the status of the son namely Mr.Sanjay Kumar as to whether he was employed or unemployed, having children or not and reasons behind sudden eruption of feud in the family. All these non disclosures of facts in the application clearly show that this is only a concocted story set up by the appellant only with a view to file the instant appeal for which the wisdom has dawned on the appellant belatedly that in case the appeal is not filed, he may have to vacate the premises in question. It is very unlikely that a father would not know the place of employment or residence or the place where is likely to shift. Further, no details have been given as to whether

the appellant made any efforts to locate the whereabouts of his son. More curious and strange is the behavior of daughter of the appellant who states that some unknown person had delivered the papers at her residence on 12.01.2015.

5. Prima facie, all the reasons cited by the appellant in seeking condonation of delay of 267 days in filing the instant appeal do not seem to be genuine one and they do not constitute sufficient cause so as to condone the same.

6. Even if this aspect with regard of condonation of delay is ignored, the fact of the matter remains that there is a concurrent finding returned by the two courts below upholding the judgment and decree of possession passed against the present appellant. The only point raised by the appellant in the present appeal is that the suit for possession was not maintainable as the rent of the premises was less than Rs,3,500/- and, therefore, he was protected under the Delhi Rent Control Act, 1958.

7. This is a question of fact and not a question of law much less a substantial question of law as to whether the suit for possession was maintainable or an eviction petition was to be filed since the suit for possession has already been decreed. Obviously, this point has been dealt

with by the two courts below and the said concurrent finding is binding between the parties and does not raise any substantial question of law.

8. Accordingly, the appeal as well as the condonation of delay application are dismissed.

CM No.1887/2015

1. In view of the dismissal of the appeal, no further directions are called for on this application.

2. Dismissed.

V.K. SHALI, J.

FEBRUARY 02, 2015
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