

\$~25

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

+ **RSA 427/2015**

SHRI RAJ KUMAR SAHNI Appellant

Through: Mr. Vinod Kumar, Adv.

versus

DELHI TRANSPORT CORPORATION & ANR
Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **30.05.2017**

CM Nos. 21627/2017(restoration), 21628/2017 (delay of 419 days in filing the restoration application) & 21629/2017 (delay of 47 days in re-filing the restoration application)

1. By these applications, the appellant seeks restoration of the appeal which was dismissed for non-prosecution vide order dated 9.12.2015.

The order dated 9.12.2015 reads as under:-

“09.12.2015

The matter has been placed before the court by the registry, as the same is lying under objections since 07.03.2014 and none has come to collect the paper book and removed the objections.

Dismissed for non-prosecution.”

2. Alongwith the application for restoration, two applications are filed. One for condonatin of delay of 419 days in filing and another application seeking condonation of delay of 47 days in re-filing of the restoration application.

3. Against the appellant there are two concurrent judgments of the courts below and whereby the suit of the appellant/plaintiff was dismissed, and in which suit appellant/plaintiff has sought to set aside his dismissal order from services by the Delhi Transport Corporation dated 24.6.1994. Appellant/plaintiff was dismissed from service after conducting regular enquiry proceedings.

4. It is seen that the present Regular Second Appeal under Section 100 CPC was filed on 28.2.2014. The same was taken back under objections. This second appeal was again re-filed on 7.3.2014. Once again the Registry raised various objections and these objections which had to be removed within 30 days were never removed and the appeal remained pending in the Filing Counter from 7.3.2014 till 9.12.2015 i.e. around 01 year and 9 months on account of not taking back the appeal for removing the objections by the appellant. Ultimately, the Registry was forced to list the

matter in Court for directions because the appeal was lying under objections since 7.3.2014. Accordingly, the impugned order dated 9.12.2015 was passed dismissing the appeal for non-prosecution.

5. Even thereafter, these applications have been filed with delay of 419 days in filing and 47 days in re-filing, and which it is argued is because the appellant/plaintiff is around 82 years of age and not keeping good health.

6. In view of the gross negligence of the appellant, and against whom there are two concurrent judgments of the courts below dated 10.5.2012 and 10.1.2013 dismissing the suit for setting aside the dismissal order, no condonation of delay can be granted and even if condonation of delay can be granted in filing of the restoration application, no grounds exist for setting aside the order of dismissal for non-prosecution dated 9.12.2015 in view of the fact that for as many as around 01 year and 9 months appeal remained at the Filing Counter without the appellant taking back the same for re-filing after removing objections.

7. The applications are therefore dismissed.

VALMIKI J. MEHTA, J

MAY 30, 2017

ib

RSA 427/2015

page 3 of 3