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

+ RFA 374/2014

RAJBIR SINGH

..... Appellant

Through: Mr. Rajat Aneja and Mr. Vijay
Kasana, Advs.

versus

AJAY PAL & ANR

..... Respondents

Through: Mr. Madan Lal Kalkal, Adv. for R1.
Mr. S.R. Sharma, Adv for DDA.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **06.07.2015**

CM Nos.13477/2014 (for condonation of delay of 1134 days in filing the appeal) and CM No.13478/2014 (for condonation of delay of 85 days in re-filing the appeal)

1. The first application, i.e. CM No.13477/2014, is an application seeking condonation of delay in filing the appeal against the final judgment and decree dated 13.12.2010. The second application, i.e. CM No.13478/2014, is an application seeking condonation of delay in re-filing the appeal. Even as per the applicant/appellant, the delay in re-filing is of nearly 85 days.

2. Insofar as the delay in filing the appeal is concerned, according to the applicant/appellant, the delay is of 1134 days.

3. These applications have been filed in the background of following brief facts:

3.1 Respondent No.1 filed a suit for specific performance seeking to enforce an agreement to sell/bayana receipt dated 23.7.2003. The court

while decreeing the suit instead of ordering specific performance directed the recovery of Rs.10,80,000/- with interest at the rate of 10 per cent per annum from the date of the institution of the suit till its realization along with cost.

3.2 The applicant/appellant says that the delay occurred on account of the lawyer's fault, inasmuch as, though instructions has been given to his lawyer, one Mr. Sunil Prasad, Advocate, no steps were taken by him to file an appeal against the aforementioned judgment and decree.

3.3 It is the assertion of the applicant/appellant that, for the first time, he became aware of the fact that no appeal had been filed when a notice dated 30.1.2014 (was affixed on the property of the applicant/appellant, pursuant to directions of the executing court), in March, 2014.

3.4 It is submitted that the applicant/appellant engaged another counsel on 25.3.2014 and simultaneously made enquiries with his erstwhile counsel Sh. Sunil Prasad. It is averred that his enquiries with Mr. Sunil Prasad revealed that an appeal, vide diary No.85815/2011, had been filed by him on 27.6.2011, which had been returned by the Registry with objections. Sh. Sunil Prasad, according to the applicant/appellant had taken no steps towards removal of objections and having the appeal listed.

3.5 The applicant/appellant also avers that in view of the conduct of Mr.Sunil Prasad, a complaint was lodged with the Bar Council of Delhi, on 3.4.2014; which I am told, is pending consideration.

3.6 The instant appeal was filed, I am informed by Mr. Aneja, on 5.4.2014. The Registry's record though shows the date of filing as 21.04.2014. Qua this appeal as well, there were objections recorded by the

Registry, which lead to a re-filing, after removal of the objections, on 17.8.2014.

3.7 The non-applicant/respondent, vide his reply, has vehemently opposed the condonation of delay, not only on the ground of the vast period which has elapsed but also on the ground that the application is not *bona fide*.

3.8 For this purpose, the respondents counsel has referred me to the proceedings dated 1.6.2012, held before the executing court, in execution petition No.67/2011. My attention has been drawn to the fact that on that date, the applicant/appellant (who was the judgment debtor in the execution proceedings) was present, and that, he had indicated to the court that the decretal amount will be paid.

3.9 It is, therefore, the contention of the learned counsel for the respondents that the assertion of the applicant/appellant that he became aware of the non-institution of the appeal only in March, 2014 pursuant to affixation of notice issued by the executing court, does not stand reason.

4. I have heard Mr. Aneja in support of the captioned applications and the counsel for the respondent in opposition. I am persuaded to hold in favour of the respondents as the applicant/appellant has clearly been tardy, in his approach, in the matter. The injury caused due to procrastination is compounded by the lack of candour. Illiteracy of the applicant/ respondent which is trotted as another reason for delay cannot be used to gloss over the circumstances which point to knowledge of non-institution of the appeal.

4.1 The circumstances obtaining in the matter are indicative of the fact that the applicant/appellant would have had knowledge of non-filing

of the appeal by his erstwhile Advocate, Mr. Sunil Prasad, at least by 1.6.2012, if not earlier. The delay between that date and the filing of the appeal is little less than two (2) years. The instant appeal was filed only on 21.4.2014.

4.2 As noted above, qua the instant appeal there is a delay of 1134 days in filing and 85 days in re-filing. I see no reason to condone the delay, there being complete absence of sufficient cause and bonafides, as well.

5. The applications are disposed of.

6. Consequently, the appeal is rendered infructuous and is, accordingly, dismissed.

RAJIV SHAKDHER, J

JULY 06, 2015

s.pal