

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

+ **RSA No.9/2015**

Decided on : 12th January, 2015

DDA

..... Appellant

Through: Mr.J.H.Jafri, Adv.

versus

BRAHM PRAKASH

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM No.465/2015

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

C.M. No.466/2015

1. This is an application seeking condonation of delay of 35 days in filing the instant appeal.
2. For the reasons stated in the application as sufficient cause has been shown, the delay of 35 days in filing the instant appeal, is condoned and the application is allowed.

R.S.A. No.9/2015

1. The learned counsel for the appellant has stated that there are substantial questions of law involved in the matter, which are as follows (Page 19 of the petition):

“i) Whether the dismissal of RCA resulting from the dismissal of application under Section 5 of Limitation Act amounts to denial of substantial justice?

ii) Whether substantive justice can be sacrificed/denied at the alter of mere technicalities?

iii) Whether the Learned First Appellate Court’s order suffers from the vice of perversity?”

2. I have perused these questions. However, none of them is a substantial question of law.

3. Before dealing with the submission made by the learned counsel for the appellant, it may be pertinent to mention that the respondent had filed a suit for permanent injunction contending that he was in occupation of a parcel of land forming part of Khasra No.15/23 of Village Najaf Garh admeasuring 3 bigha 7 biswa. It was his case that he had constructed a property over the said parcel of land and the appellant/defendant was threatening to dispossess him. The

appellant/defendant filed their written statement and took various preliminary objections with regard to the maintainability of the suit.

4. The case set up by the respondent/plaintiff was that he had been declared an 'asami' by the revenue authorities in respect of the aforesaid parcel of land.

5. The case set up by the appellant/defendant was that a notice under Section 53B of the DDA Act had not been given to them and that the land in question was an acquired parcel of land and it had been handed over to the appellant/plaintiff.

6. It was also contended that the revenue authorities did not have the jurisdiction to decide the question of the respondent/plaintiff being an 'asami' in respect of the parcel of land because title of the same vested with the respondent/plaintiff.

7. On the pleadings of the parties, the following issues were framed:

- “1. Whether the plaintiff is entitled to decree of permanent injunction, as prayed for ? OPP.
2. Whether the plaintiff has no locus standi to file the present suit? OPD.

3. Whether the suit of plaintiff is not maintainable for want of mandatory statutory under Section 53 DD Act? OPD.

4. Relief.”

8. Issue No.1 with regard to the permanent injunction in favour of the respondent/plaintiff is concerned, the plaintiff had examined four witnesses while the appellant/defendant had examined only one witness DW-1, Sh.Baljeet Rathi, Kanungo. The appellant/defendant's witness himself had admitted that the respondent/plaintiff was in possession of the said parcel of land during his entire posting.

9. The factum of respondent/plaintiff being in possession was taken as one of the vital ground as acceptance of the case of the respondent/plaintiff and, therefore, it was prayed that the respondent/plaintiff could not be dispossessed from the land in question except in accordance with the due process of law.

10. The trial court did not decide the question with regard to the respondent/plaintiff being the asami of the land in question nor was it within its domain.

11. The appellant/defendant ought to have taken appropriate action if they felt that the revenue authorities had wrongly decided the respondent/plaintiff to be an asami in respect of the parcel of land in question, which apparently it has not taken.

12. Feeling aggrieved by the aforesaid judgment/decreed passed in favour of the respondent/plaintiff, the appellant preferred an appeal before the first appellate court against the decree of permanent injunction. This appeal was filed belatedly with a delay of 531 days although an application under Section 5 of the Limitation Act, 1963 was filed by the appellant/defendant.

13. The explanation furnished by the appellant/defendant was not accepted by the first appellate court to be enough to constitute sufficient cause within the definition of Section 5 of the Limitation Act, 1963 and accordingly vide order dated 04.08.2014, the delay of 531 days taken by the appellant/defendant in filing the appeal was not condoned and the appeal was treated as barred by time.

14. The order dated 04.08.2014 is a reasoned order and there is a reference to number of authorities of the Supreme Court showing that the law of limitation both for the private party and the Government is

the same and while condoning the delay what is to be seen are the bona fides of the parties seeking condonation of delay rather than the quantum of delay.

15. The question that the explanation furnished by the appellant/defendant was not considered to be bona fide and genuine so as to constitute 'sufficient cause' is a matter of discretion to be exercised which the first appellate court has done and passed the order dated 04.08.2014. This court, merely being a superior court to the first appellate court, cannot sit over the same and upset the finding of the first appellate court.

16. Other than this, I feel that no question of law much less a substantial question of law is involved in the matter.

17. I accordingly feel that the present appeal does not raise any substantial question of law. The same is dismissed.

V.K. SHALI, J

JANUARY 12, 2015/dm