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

+ **Date of Decision: 03.12.2015**

% **RSA 230/2015 & C.M. No.11539/2015**

% **RSA 231/2015 & C.M. Nos.11544/2015 and 19516/2015**

CHANDA VERMA & ANR Appellants

Through: Mr. Shiv Charan Garg and Mr. Imran
Khan, Advocates

versus

DHEERAJ KUMAR Respondent

Through: Mr. Rajiv Mehra, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The appellants have preferred the present two appeals to assail the common order dated 08.04.2015 passed by the First Appellate Court, namely, ADJ-14 (Central), Tis Hazari Courts, Delhi, whereby the first appeals preferred by the appellant/defendant being RCA Nos. 20/2014 and 21/2014 have been dismissed as being barred by limitation and, consequently, the first appeals of the appellant have not been considered on merits. The First Appellate Court has disallowed the applications moved by

the appellants under Section 5 of the Limitation Act by the impugned order. The said first appeals had been preferred by the appellants/defendants to assail the judgment and decree dated 07.06.2013 passed by the Trial Court, namely, Civil Judge-05 (Central), Tis Hazari Courts, Delhi in Suit No.155/2012 – a suit filed by the respondent/plaintiff for recovery of Rs.82,875/- and in the counter claim of the appellant/defendant being CC No. 78/2013.

2. The Trial Court had decreed the suit of the respondent/plaintiff for Rs.75,000/- along with interest for the period 01.11.2013 till 31.05.2014 @ 9% p.a. along with pendente lite interest and future interest @ 9% p.a. on the decretal amount from the date of filing the suit till actual realisation of the same. Costs were also awarded to the respondent/plaintiff. The counter claim of the appellant was also partially decreed by holding that the appellant/defendant was entitled to rent @ Rs.7,500/- p.m. for 01.03.2003 to 31.10.2003, i.e. Rs.60,000/- from the plaintiff.

3. The first appeals were delayed by 189 days when it was so filed. The appellant filed applications under Section 5 of the Limitation Act to explain the said delay. The explanation furnished by the appellant was that the certified copy of the impugned judgment and decree dated 07.06.2013 (passed by the Trial Court) was applied for on 10.06.2013 and was made available on 06.07.2013. Thus, the period between 10.06.2013 to 06.07.2013 was liable to be excluded in the matter of computation of limitation. The appellant explained that he could not contact his lawyer and was not aware of the result of the judgment and decree dated 07.06.2013. The appellant no.2 had to go to China for business trip between 20.06.2013 to 25.06.2013

and again between 05.08.2013 to 12.08.2013. He also explained that in the month of September and October, the appellants were not well and were in consultation with the doctor. In this regard, the prescription of chemists bill were placed before the First Appellate Court. In the month of November and December 2013, the son of the appellant suffered from typhoid and was hospitalised between 15.11.2013 to 21.11.2013. After being discharged, he was advised complete bed rest.

4. A perusal of the impugned order shows that the First Appellate Court has partially accepted the explanation furnished by the appellant. What has impressed the First Appellate Court is the fact that for about a month after the passing of the impugned judgment and decree by the Trial Court and after obtaining the certified copy of the order, the appellant did not contact his counsel, i.e. between 06.07.2013 and 05.08.2013. The illness suffered by the appellants and their son and the foreign trips took place upto November 2013. Even thereafter, the appellants delayed the filing of the appeal till 07.02.2014 – when the appeal was filed. Thus, the appellant did not take steps for further about two months i.e. between December 2013 and January 2014 for filing of the appeal. The said delay was held to have been not explained by the appellant. Consequently, the application under Section 5 of the Limitation Act was dismissed, and the appeal was dismissed as being barred by limitation.

5. The submission of counsel for the appellant is that the appellants were not required to explain each days delay. The appellants could not attend to and follow up the matter with their counsel on account of repeated disruptions, namely, the foreign trip of appellant no.2 for business on two

occasions in June and August 2013, and the suffering of illness by the appellants and their son between September to November 2013. Learned counsel submits that even after the son of the plaintiff was discharged on 21.11.2013, he was advised complete bed rest.

6. Learned counsel further submits that the delay was not excessive, considering the fact that the decree in question was a money decree passed in favour of the respondent. The Trial Court had also decreed interest in favour of the respondent for the post decree period up till realisation. Consequently, the interest of the respondent/decreed holder was sufficiently protected and no serious prejudice would have been suffered by the respondent if the delay had been condoned by putting the appellant to terms.

7. On the other hand, learned counsel for the respondent submits that the appellant has failed to explain the delay of over six months in filing the first appeal. He fully supports the impugned order of the First Appellate Court.

8. Having perused the impugned order, heard learned counsels and perused the grounds taken by the appellants to explain the delay, I am of the view that the present was a fit case where the First Appellate Court should have condoned the delay by subjecting the appellant to terms. The ultimate objective of the courts of law is to do substantial justice. It is well settled that unless the delay is substantial; demonstrates rank negligence on the part of the appellant; where the appellant is found to have deliberately delayed the filing of appeal or; the delay is such that its condonation would cause serious prejudice to the opposite party, the delay would be condoned. In cases where there is some delay, which may not be entirely explained – but in respect of which there is some explanation, the courts would condone the

same by appropriately compensating the respondent with costs, so that the substantive right of a party to be heard in first appeal is not denied.

9. In the present case, the respondent obtained a money decree in his favour. The money decree itself provides for payment of interest till realisation. Thus, even if there was some delay in filing the first appeal, the interest of the respondent stood taken care of in the judgment and decree of the Trial Court itself. Pertinently, the respondent had not even filed an execution petition by the time the first appeal was preferred by the appellant. Thus, the respondent himself did not deal with the matter with such urgency, as to deny condonation of delay to the appellant. The First Appellate Court has itself referred to the judgment of the Supreme Court in ***Poonam & Ors. v. Harish Kumar & Anr.***, 2011 XI AD (SC) 598 – where the Supreme Court observed that unless the delay was gross, an explanation for the same should be liberally construed. The First Appellate Court has also taken note of the judgment of the Supreme Court in Civil Appeal No.2075/2010, titled ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation***, where the Supreme Court held that no hard and fast rule can be laid down in dealing with the applications for condonation of delay. The Supreme Court observed that “*this Court has justifiably advocated adoption of a liberal approach in condoning the delay on short duration and a stricter approach where the delay is inordinate*”.

10. In the facts of the present case, it could not be said that the delay was inordinate in the context of the dispute between the parties, as already taken note of herein above. Therefore, the First Appellate Court ought to have adopted a more liberal approach in the matter, and condoned the delay on

terms so as to appropriately compensate the respondent. Consequently, the appeal is allowed and the impugned order is set aside. The delay in filing the first appeals are condoned subject to payment of costs of Rs.15,000/- cumulatively in both the appeals to the respondent.

11. The first appeals are remanded back to the First Appellate Court for consideration of merits. Costs shall be paid before the First Appellate Court when the parties appear before it. The parties shall appear before the First Appellate Court on 11.01.2016.

VIPIN SANGHI, J

DECEMBER 03, 2015

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