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

+ RFA 365/2015

PEYYETI MURALI KRISHNA KUMAR & ANR Appellants
Through: Mr R.K. Singh, Adv.

versus

PRAJESH DAGAR & ANR Respondents
Through: Mr M.L. Mahajan & Mr Gaurav
Mahajan, Advs. for R-1.
Mr Dhruv Tamta, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **16.12.2015**

CM No. 10018/2015 (condonation of delay of 2404 days in filing)

1. I have recorded in great detail the submission made before me on 14.10.2015. I do not intend to repeat the same. Therefore, the relevant part of the order dated 14.10.2015, is extracted hereinbelow:

“..... 1. In the captioned application, the appellant seeks condonation of delay of 2404 days (which in effect is, nearly, a period of 7 years and 10 months), in preferring the appeal.

1.1 A perusal of the application would show that the appellants have taken a plea that their advocate, one, Mr. Ashok K. Srivastava duped them into believing after the trial court delivered its judgment on 21.07.2007, that an appeal had been preferred against the said judgment.

1.2 Interestingly, in the very same application, it is stated that Mr. Ashok K. Srivastava claimed to have also filed, in and around June-July, 2008, a criminal complaint against respondent no.1.

1.3 Apparently, according to the appellants, a copy of order

dated 20.05.2008, said to have been passed in Crl. Complaint No.311/06/2008, was faxed to the appellants.

1.4 It is averred that, it was projected to the appellants by Mr. Ashok K. Srivastav, that he had secured for them, a recovery of Rs.30 Lakhs.

1.5 It is further averred that on this pretext, Mr. Ashok K. Srivastava demanded a further sum of Rs.4 Lakh on the ground that he had got them a “very favourable order”.

1.6 The appellants claim that the demand for money raised their suspicion, and accordingly, one, Mr. P. Rajakumar, who works in NCRT, Delhi was asked to enquire as to whether any such order had been passed by a court in Delhi.

1.7 I am told by the learned counsel for the appellants that Mr. P. Rajakumar is, the brother of the appellant no.1. It is further averred that in August 2008, enquiries were made by Mr. P. Rajakumar, which led to the discovery that order dated 20.05.2008 was a fake and non-existent order.

1.8 It is stated that upon discovery of this fact, appellant no.1 visited Delhi in September 2008 and confronted Mr. Ashok K. Srivastava. It is averred that Mr. Ashok K. Srivastava attempted to explain the “misconduct” by putting the blame for the said act on his clerk. Mr. Ashok K. Srivastava purportedly apologized for the act of his clerk and assured appellant no.1 that he would not demand any further amount towards fees, and that, he would ensure success in the appeal “pending before the High Court”.

1.9 An assurance was also, purportedly, given by Mr. Ashok K. Srivastava that if, the appellant were to lose, he would return the amount received from them towards fees in instalments of Rs.1.50 Lakh per month.

2. It is submitted that since the appellants had already paid a sum of Rs.24 Lakh as fees, they were trapped into continuing with the engagement of Mr. Ashok K. Srivastava, as their advocate.

2.1 It is also sought to be projected by the appellants that they

were in continuous communication with Mr. Ashok K. Srivastava, on the telephone.

2.2 There is also a reference to certain text messages, which, purportedly, were exchanged between appellant no.1 and Mr. Ashok K. Srivastava, in March 2015. It is stated that since Mr. Ashok K. Srivastava, refused to take calls of the appellants, in March 2015, a visit was made to the house of Mr. Ashok K. Srivastava.

2.3 I am told by the learned counsel for the appellants that on 29.03.2015, appellant no.1 visited the house of Mr. Ashok K. Srivastava whereupon he found that he had left the house and was absconding for the past six months. It is stated that it was only thereafter that, certified copies of the suit papers were obtained on 07.04.2015, and the present appeal, was filed.

3. I may only record, albeit to place the explanations of the appellants in perspective, that the, suit filed by them, which was for declaration, cancellation of documents, possession, permanent and mandatory injunction and for recovery of damages / mesne profits, was dismissed on the ground that they had indulged in the abuse of process of court by initiating a false litigation.

3.1 The trial court came to this conclusion based on a statement recorded by the court under Order 10 of the CPC.

3.2 A perusal of the statement reveals that appellant no.1, is a graduate, in Chemical Engineering from Nagpur University. The statement also reveals that between 1980 to 1981, he was working, in a senior executive position, in a company by the name of Vapurco Chem Tech and, it is around that time that, he had left for Mumbai.

3.3 The statement also reveals that at that time, he was carrying on his business in Chemicals. More importantly, the statement also brings to fore the fact, which is that, the appellants have identified, not only their signatures but also their thumb impression on the agreement to sell and GPA. The appellants have also admitted that they have appended their signatures on the receipt which is, for a sum of Rs.1,05,000/-,

possession letter and indemnity bond.

4. Therefore, what prima facie, is not explained is, as follows :-

(i). That once the appellants came to know in September 2008 that Mr. Ashok K. Srivastava had supplied them a fake copy of the order dated 20.05.2008, why did they not insist that they be shown a copy of the appeal said to be “pending” in the High Court. I have used the word ‘pending’ consciously because that is exactly what is stated in the application.

(ii). Appellant no.1, as indicated above, is a graduate in Chemical Engineering. In the ordinary course, he would have known since he had also initiated the proceedings in the court below that, no proceedings, could have been filed without the signatures of the appellants and without execution of a vakalatnama. The appellants, apparently, raised no such issues with the lawyer.

(iii). The payments to which reference have been made and the details with regard to which are set out in Annexure A to the application show that except for four (4) payments, all other payments have been made to one, Mr. Vishal Srivastava. I am told by the learned counsel for the appellants that Mr. Vishal Srivastava is the son of Mr. Ashok K. Srivastava; who is not a lawyer. The four (4) payments which, supposedly, have been made to Mr. Ashok K. Srivastava, add up to a sum of Rs.80,000/- out of a total sum of Rs.24,12,000/-.

(v). The learned counsel for the appellants says that the property at that time was worth Rs.20 Lakhs. There is no explanation why the appellants would pay in (sic: “towards”) fee, a sum of Rs.24,12,000/-.

(vi). I am told by the learned counsel for respondent no.1 that the total consideration for transaction was a sum of Rs.1,05,000/- which is evidenced by the receipt said to have been executed by the appellants. Curiously that document has not been filed with the appeal.

(vii). To date, no criminal proceedings have been triggered against Mr. Ashok K. Srivastava. The learned

counsel for the appellant says that only a complaint is made with the Bar Council of Delhi.

(viii). The screen shots of the text messages, which have been filed, pertain to March 2015. I must record that the counsel for the appellants says that in so far as the details prior to March, 2015, have not been preserved. According to me, the screen shots by themselves if, one were to delve into the matter further, cannot be taken as an evidence.

5. As indicated above, the appellants should have suspected their advocate if, what they say is correct, clearly after September 2008.

6. In view of the fact that the record of the trial court is not available, I intend to call for the record to examine the matter further. Accordingly, the Registry will requisition the trial court record.....”

1.1 Since the original record had not been received, I gave opportunity to the respondents to file a reply to the captioned application and to the appellant to file a rejoinder thereto.

2. Mr Singh, who appears on behalf of the appellants, adverts to his rejoinder in support of pleas made before me on 14.10.2015. Mr Singh, in particular, in support of his submission has relied upon the following extract from the rejoinder:

“.... That there are many lapses on the part of the appellants in not being of ‘very questioning nature’ and not putting the delinquent counsel on the mat, particularly after discovering that his office had given them a forged Court order. But it is not very difficult to fathom the position of a client, who has already paid a sum of Rs. 24 lakhs as fees for prosecuting the suit before the trial court and the appeal before the High Court. The position of a counsel sitting in his chamber/ officer is a dominating one....”

2.1 Mr Singh also relies upon a judgement of the Supreme Court in the case of *N. Balakrishnan vs M. Krishnamurthy (1998) 7 SCC 123*.

3. As would be clear from the proceedings recorded on 14.10.2015, that apart from anything else, once the appellants became aware of the fact that their lawyer had duped them, and that too in August, 2008, it is unfathomable as to how the appellants continued to avail of services of their advocate, one, Mr Ashok K. Srivastava, even thereafter. The explanation given by them in the rejoinder, that since, monies had been paid and the appellants felt trapped, according to me, is, in the very least, incredulous.

4. I am informed by Mr Singh that criminal proceedings have been filed, post the order dated 14.10.2015. I am sure these very steps could have been taken much earlier, at least in and around August, 2008. The appellants had various options available with them to recover monies and/or even to proceed by way of criminal complaint against the advocate. None of these options were availed of at the relevant time.

5. In so far as the judgement in the case of *N. Balakrishnan vs M. Krishnamurthy* is concerned, according to me, the same, for the reasons given above, is completely distinguishable. The delay involved in that case was 883 days. The Supreme Court condoned the delay as, after the litigant became aware of the facts that his lawyer had duped him, he took appropriate action in the matter to retrieve the situation. In this case, as noted above, no such steps were taken by the appellants. Though I am not on the extent of the delay [which, in this case, even according to the appellants, is a period involving 2404 days, that is, a period of nearly seven (7) years and ten (10) months], it is the quality of explanation that befuddles me. It borders on incredulity. There is, according to me, no sufficient cause

shown which would persuade me to condone the delay.

6. Accordingly, the captioned application is dismissed.

RFA 365/2015 & CM No. 10017/2015 (Stay)

7. In view of the order passed above in CM No. 10018/2015, the captioned appeal and the application will meet the same fate. Accordingly, the appeal and the application are dismissed.

RAJIV SHAKDHER, J

DECEMBER 16, 2015

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