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

+ **FAO 207/2015**

SUDHIR KUMAR

..... Appellant

Through: Mr. Dinesh Kumar Tiwary, Advocate

versus

STATE GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Niti Jain for Mr. Anuj Aggarwal,
Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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10.07.2015

CM Nos.11888/2015 and 11889/2015 (Exemptions)

1. Allowed subject to just exceptions.

CM No.11887/2015 (condonation of delay in filing) and CM No. 11890 / 2015 (condonation of delay in re-filing)

2. The first application, i.e. CM No.11887/2015 is an application seeking condonation of delay in filing the appeal while, the second application i.e. CM No.11890/2015 is filed to seek condonation of delay in re-filing the captioned appeal.

2.1 Even according to the applicant/appellant, the delay in filing the appeal is of nearly 473 days, whereas the delay in re-filing the appeal is of 14 days.

3. The reasons given for condonation of delay in filing the appeal are broadly, as follows :-

3.1 That the applicant/appellant works in a private organisation on

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contract basis, therefore, he could not arrange the necessary funds to pursue the litigation.

3.2 There is also yet another reason given that the applicant /appellant was sick for a long period of time and therefore, could not file the appeal.

4. The averments referred to above are bald averments and not supported by any document to establish, even tentatively, the veracity of the assertions made therein. The salary slips of the applicant/appellant have not been filed. There are also no medical certificates brought on record.

4.1 In these circumstances, I am not inclined to condone the delay in filing the appeal. The application is accordingly dismissed.

5. In so far as the application for condonation of delay in re-filing is concerned, it will have to suffer the same fate as I have dismissed for application for condonation of delay in filing the appeal.

5.1 Accordingly, the application for condonation of delay in re-filing is also dismissed.

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6. I may only note that on the merits, it was the applicant/appellant's case that his petition under Section 276 of the Indian Succession Act, 1925 was dismissed on the ground that the original will was not filed. It is the learned counsel's submission that the original will was filed in the court of Tehsildar Barut, Muzaffarnagar, in a matter titled : Tanishka Chaudhary Vs. Karan Singh, and therefore, it could not be filed in the petition, out of which the impugned judgment has arisen.

6.1 I may only note that this is not the only ground on which the appellants' petition has been rejected.

6.2 In paragraph 25, the trial court has noted that both appellant no.1's cross-examination (i.e. PW-1) and that of the attesting witness (one Mr. Virender Singh) remained incomplete.

6.3 The court noted that no reliance could be placed on the depositions made before him. The trial court thus came to the conclusion that the witnesses had not supported the case of the appellants.

7. In view of the order passed hereinabove in the applications filed for condonation of delay; the captioned appeal will necessarily have to be dismissed. It is ordered accordingly.

RAJIV SHAKDHER, J

JULY 10, 2015

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