

*

HIGH COURT OF DELHI AT NEW DELHI

+

EX.F.A. 3/2016

Decided on: 20th January, 2016

YOGENDRA KUMAR

..... Appellant

Through: Mr. Amarjit Singh, Advocate

versus

SANSAR SINGH (DECEASED) THR LRS & ANR.. Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

CM APPL.2093/2016 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

EX.F.A. 3/2016 & CM APPL.2092/2016 (stay) & 2094/2016 (delay)

1. The appellant has filed an application being CM APPL.2094/2016 under Section 5 of the Limitation Act, 1963 seeking condonation of 1245 days delay in filing the present execution appeal.
2. Briefly stated that fact of the case are that Sansar Singh (since deceased) filed a suit for specific performance against one Bachan Singh in respect of a plot of land measuring 600 sq. yds., situated

in Khasra No.22/23, village Ranhola, Delhi. During the pendency of the suit an application under Order 1 Rule 10 read with Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC) was filed by the deceased/plaintiff for impleading three more parties as defendants. These were, Mandeep Singh, Radhey Shyam and Vijay Kumar. The said application was allowed and the three applicants were impleaded as defendants No.2 to 4 in the suit. The suit was ultimately decreed.

3. The present appellant is an objector who had filed objections claiming himself to be bona fide purchaser of the suit property which he claims to have purchased from one Sanjeev Kumar Gahlot on 04.08.2008. These objections were also dismissed by the executing Court vide order dated 30.07.2012. It is against this order that the present execution appeal has been filed.
4. Along with the appeal an application under Section 5 of the Limitation Act, 1963 has been filed wherein it has been averred that the appellant after suffering the adverse judgment on 30.07.2012 applied for certified copy of the judgment on

19.09.2012 which was made available to him on 28.09.2012. It has been stated by the learned counsel for the appellant since the certified copy of the judgment was delivered on 28.09.2012 this clearly shows that the appellant intended to file an appeal, however, he has stated that the appellant's mother who was living in the village was taken seriously ill because of which she was brought to Delhi in the month of May, 2012 and she continued to be on treatment including oxygen therapy till February, 2015 when she unfortunately expired. It has been stated that during this period between the date of rejection of the objections of the appellant and the death of mother of the appellant, he was completely tied down at his home and attending to his ailing mother which included administering oxygen to her. Because of these reasons, it has been stated that the appellant who was an Income Tax practicing advocate, he could not take steps timely for the purpose of filing the appeal. It has been stated that no serious prejudice will be caused to the respondents as the execution application of the other three impleaded parties has already been allowed and they have

been permitted to file their evidence by way of Affidavit by the Executing Court. It is accordingly contended that apart from the aforesaid reasons which in the eyes of the appellant constitute sufficient cause, no serious prejudice would be caused to the respondents in case the application of the appellant is heard on its merits thereby permitting the appellant to join the execution proceedings for the purpose of proving his evidence.

5. I have carefully considered the submission made by the learned counsel for the appellant and have gone through the record.
6. The law regarding condonation of delay is well settled. It has been laid down repeatedly by the Apex Court that while condoning the delay in filing the appeal of application, the Court must take a pragmatic and lenient view rather than strict one. It has also been stated that the length of delay is not important for the Court but what is important is the *bona fides* of the appellant seeking condonation of delay.
7. Considering both these parameters in the instant case, the application of the appellant seeking condonation of delay is totally

misconceived on account of the fact that except giving the vague excuses that he was busy in attending to his ailing mother, no plausible explanation has been furnished by the appellant as to why he could not file the appeal timely. This is despite the fact that the appellant himself has admitted that he is a practicing lawyer and therefore, this was all the more necessary for him to act with due despatch and seriousness and take steps for filing the appeal within time. It seems that the appellant being a practicing advocate he took it for granted that whatever is the delay which has taken place in filing the execution appeal, still he will be able to manage the affairs and get the delay condoned. This kind of attitude on the part of the appellant or his counsel is bereft of any legal sanctity.

8. In my considered view, the explanation which has been furnished by the appellant or the reasons which are given by him do not constitute '*sufficient cause*' within the meaning of law as this is not a delay which cannot be said to be beyond the control of the appellant and there is a considerable delay in filing the appeal and in case the application for delay is allowed, it will only keep the

matter alive unnecessarily and a non serious player will be come into play.

9. In view of the aforesaid reasons, I am of the considered opinion that as the appellant has not been able to show to the Court that he was prevented by any sufficient cause from assailing the impugned order, I, therefore, dismissed the appeal as barred by time.
10. Pending applications also stand disposed of.
11. Let the file be consigned to record room.

V.K. SHALI, J.

JANUARY 20, 2016

vk