

\$-9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.L.P. 65/2015

KOUSHIK BHASIN

..... Petitioner

Through: Mr. Akshay Chandra, Adv.

versus

SUDHIR MALIK

..... Respondent

Through: Mr. Robin George, Adv. with
Mr. Joydeep Bhattacharya, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

%

17.02.2016

CrL M.A. 2014/2015

Present is an application seeking condonation of 979 days delay in filing the accompanying petition for leave to appeal. It is the assertion of the applicant that the delay was occasioned by the circumstance that he was unwell and he infact underwent two heart surgeries. It is therefore urged that the delay occasioned in filing the accompanying leave to appeal is neither intentional nor deliberate.

A perusal of the reply filed on behalf of the private respondent reveals that the factum of the applicant's ill health and heart surgeries is admitted. Further it is urged on behalf of the private respondent that the overall conduct of the applicant disentitles him from continuing with the present proceeding.

In that behalf it would be relevant to notice that the complaint case instituted by the applicant had been dismissed for non prosecution. He instituted a criminal revision petition against the order of dismissal belatedly which came to be withdrawn in view of the circumstance that it was not maintainable.

It is further noticed that even after the criminal revision petition against the order of dismissal of complaint was withdrawn, the applicant did not institute the present leave petition for a period of over two months.

CRL.L.P. 65/2015

Page No. 1/3

Signature Not Verified

Signing Date: 25.09.2024 17:08:33
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

8

In my view there can be no quarrel on the position that the admitted ill health of the applicant and his undergoing two heart surgeries constitute sufficient cause for condonation of delay in terms of Section 5 of the Limitation Act, 1963 and extension of the prescribed period of limitation.

However, it would be unfair to allow the present application without compensating the respondent for the expenditure occasioned to him as consequence of the delay.

In view of the foregoing, the present application seeking condonation of delay in instituting the accompanying leave petition is allowed subject to the applicant compensating the respondent for the inconvenience caused to the latter by paying a sum of Rs. 20,000/- to him forthwith.

Application is disposed of.

CRL.L.P. 65/2015

The present is an application under Section 378 (4) read with Section 482 Cr.P.C, 1973 praying for grant of leave to appeal against the impugned order dated 29th March, 2012 whereby the criminal complaint under Section 138 Negotiable Instruments Act filed by the petitioner was dismissed for non prosecution.

Since the complaint case filed on behalf of the leave petitioner has not been decided on merits, in my view, the leave to appeal as prayed for has to be granted. Leave petition is accordingly allowed.

Let the leave petition be registered as an appeal.

Crl. Appeal 172/2016 (to be numbered)

With the consent of counsel appearing on behalf of the parties, the appeal is heard and is disposed of.

A perusal of the impugned order discloses that the complainant has been remiss in prosecuting his complaint before the Magistrate. Consequently, since the complainant despite repeated opportunities failed to prosecute his case, the complaint has been dismissed.

9

Mr. Akshay Chandra, learned counsel appearing on behalf of the appellant states that inadvertently the next date of hearing in the complaint case was recorded incorrectly due to which there was nobody present on behalf of the complainant before the Court of the Magistrate on the date when the impugned order was passed.

In the facts and circumstances of the case, the plea urged on behalf of the appellant is that the complaint has not been heard or adjudicated on merits. In my opinion an opportunity must be granted to the complainant to prosecute the complaint before the Magistrate.

The appeal is consequently allowed.

Complaint No. 4373/2010 titled Koushik Bhasin vs. Sudhir Malik is remanded back to the Court of concerned Magistrate, Tis Hazari Courts subject to payment of Rs. 10,000/- as costs to the respondent.

It is made clear that this is the final opportunity granted to the complainant to prosecute this case. No further opportunity shall be granted. The Magistrate shall ensure that the case is determined as expeditiously as possible, in accordance with law.

List the matter before the concerned Magistrate on 03rd March, 2016.

The appeal is disposed of accordingly.

Copy of this order be sent to the concerned Magistrate for information and compliance.


SIDDHARTH MRIDUL, J

FEBRUARY 17, 2016
sr