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

+ **FAO 114/2016 & C.M. No.9176/2016 (for delay)**

DR SANJEEV CHAWLA Appellant

Through: Appellant in person.

versus

THE STATE & ORS Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **17.05.2016**

1. The present appeal has been filed by the appellant against the order dated 3.9.2013 passed by the learned Additional District Judge-12, Central District, Delhi , by virtue of which the probate petition of the appellant was dismissed. Along with the appeal, the appellant has filed an application seeking condonation of 822 days delay in filing the appeal. The reasons for condonation of delay given in the application are as under :-

- (i) The petitioner was working as a consultant doctor in the State Medical and Health Services of Uttar Pradesh and posted in the district of Gautam Budh Nagar, Noida in the year 2012 and thereafter, he was transferred to District Shahjahanpur, U.P. in 2014. The petitioner was on medical leave till 30.9.2015 and joined the duties at District Pilibhit on 1.10.2015.
- (ii) The petitioner himself was diligently prosecuting the Probate Petition and appeared before the trial court on 29.7.2013 and filed a handwritten application for summoning the witnesses.

Due to his busy schedule and professional obligations, on the same day, he entrusted the matter to Ms. Chitra Gera, Advocate and returned to his job at Shahjahanpur.

- (iii) The petitioner was not able to physically visit Delhi but remained in constant touch with his counsel to know the status of the case, who kept on informing him that the matter is adjourned, judge is not sitting, summons could not be served, etc.
- (iv) On not being satisfied with the counsel, the petitioner engaged another advocate in the month of January, 2015, who after enquiry from the court told the petitioner that the Probate Petition has already been dismissed on 3.9.2013.
- (v) The petitioner filed an application on 24.3.2015 bearing MPC No.6/2015 for setting aside the said order before the learned ADJ. On 3.12.2015, the learned judge raised the jurisdiction issue and counsel for the petitioner withdrew the application to approach the appropriate court and this took some time in filing the present appeal.

2. A perusal of the aforesaid averments made in the application would clearly show that though the name of the counsel has been mentioned to whom the brief was handed over but no action has been taken against her by approaching the professional body in case the appellant felt aggrieved by the lack of discharge of duties by her. Merely because the appellant had engaged a counsel, he is not absolved of following it up with the counsel to ensure that the appeal is filed in time. The appeal against the probate petition has to be filed within a period of 90 days while as it is being filed after 822 days for no rhyme or reason. The conduct of the appellant has been grossly

negligent. When the courts are reeling under heavy burden of backlog, it is a disservice to the institution in case the parties do not take timely action to get their grievance redressed. I, therefore, feel that it is not a fit case where the court should exercise discretion and condone the delay. As no 'sufficient cause' has been shown, accordingly, the application seeking condonation of delay is dismissed. Since the application is dismissed, the appeal has become time barred and the same is also dismissed.

V.K. SHALI, J.

MAY 17, 2016
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