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

+ RSA 229/2014

STATE BANK OF INDIA

..... Appellant

Through: Mr. Sanjeev Kakra and Bheem S Jain,
Advocates

versus

REETA THAKUR

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
05.01.2016

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Despite pass over, the respondent has not appeared even after a pass over. Accordingly, the respondent is proceeded ex-parte.

Admit. The following substantial question of law arises for consideration in the present second appeal:

Whether the First Appellate Court was justified in dismissing the first appeal preferred by the appellant/plaintiff as being barred by limitation by 28 days in the facts and circumstances of the case?

I have heard learned counsel for the appellant and perused the impugned judgment. The appellant/plaintiff had filed a suit for recovery of Rs.1,91,434/- against the respondent/defendant. In the said suit, the

respondent/defendant was proceeded ex-parte. No written statement had been filed by the respondent/defendant. The Trial Court dismissed the suit as being barred by limitation on the premise that the appellant/plaintiff was not entitled to rely upon Section 19 of the Limitation Act as the payment of Rs.20,000/- in cash made by the respondent/defendant on 19.03.2010 was not accompanied by an acknowledgment by the defendant in her writing, and that there was no claim that the payment was made by her.

The appellant then preferred the first appeal before the First Appellate Court being RCA No.62/2013. This appeal was filed belatedly and, consequently, application under Section 5 of the Limitation Act was moved to seek condonation of 28 days delay in filing of the appeal. This application under Section 5 of the Limitation Act was supported by an affidavit. The reason given in the application to seek condonation of delay was that the Trial Court had reserved orders on 22.05.2013. Counsel for the appellant had been enquiring about the delivery of the judgment every week from the reader of the Trial Court, but the judgment was not pronounced during the months of May and June 2013. Even after the reopening of the court after summer vacations, the counsel kept on making enquiries from the reader of the concerned court and the counsel was informed that the file was inside the retiring room of the learned presiding officer and the counsel shall be informed after the file comes into the hands of the reader. The application further stated that the counsel lastly enquired on 19.08.2013 from the reader, when the reader informed that the court had already pronounced the judgment and the date of the judgment may be enquired from the concerned Alhmed. It was then that the counsel learnt that the suit had been dismissed vide judgment dated 08.07.2013. The appellant further

stated that in the cause list there is a handwritten note in red colour that the file has come on 08.08.2013, i.e. after one month and immediately thereafter the certified copy of the judgment and decree were applied on 22.08.2013 and the same was delivered on 31.08.2013.

A perusal of the impugned judgment shows that the First Appellate Court has taken note of the fact that the judgment was not pronounced by the Trial Court on the date given for the said purpose, i.e. on 30.05.2013 and thereafter on 07.06.2013. The same was pronounced on the next date fixed for the said purpose, i.e. on 08.07.2013. The First Appellate Court has disbelieved the version of the appellant with regard to the enquiries made by the counsel from time to time. The First Appellate Court has also taken the view that the appellant was required to explain each days delay in filing the appeal.

In my view, the impugned judgment is patently laconic and takes a very narrow view of the power of the court to condone the delay in justified cases. It is no longer the position that the applicant seeking condonation of delay is required to explain each days delay. Ultimately, what the court has to see and satisfy is whether the delay is minor or substantial. If it is minor, as in the present case, a more liberal approach is required to be adopted – as the substantial right of a party to prefer the first appeal is involved.

In the present case, the intendment of the appellant to file the first appeal cannot be questioned. The application was supported by the affidavit of the counsel. Thus, there was no reason to disbelieve the averment made in the application. The aspect that the file had been released by the learned Judge only on 08.08.2013, even though the judgment of the Trial Court dated 08.07.2013 has not been commented by the First Appellate Court at

all. Consequently, in my view, the approach of the First Appellate Court in dismissing the application preferred by the appellant under Section 5 of the Limitation Act was wholly erroneous, and the impugned order suffers from clear perversity in this regard. The same is, accordingly, set aside. The delay in filing the first appeal is condoned. The matter is remanded back to the First Appellate Court to hear the appeal on merits.

Let the appellant appear before the First Appellate Court for preliminary hearing on 01.02.2016. The record of the courts below be sent to the First Appellate Court forthwith.

VIPIN SANGHI, J

JANUARY 05, 2016

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