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

+ C.R.P. 126/2016 & CM No.29613-29614/2016

SARITA DEVI

..... Petitioner

Through Mr.Ajay Kalra, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ORS..... Respondent

Through Mr.Rishikesh Kumar and Mr.Prem
Sagar Pal, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

16.08.2016

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CM No. 29614/2016

Exemption allowed, subject to all just exceptions.

C.R.P. 126/2016 & CM No.29613/2016

1. By the present petition the petitioner impugns the order of the appellate court dated 12.7.2016, by which the application filed by the petitioner under Section 5 of the Limitation Act to condone delay of 234 days in filing the accompanying appeal was dismissed.

2. The original petition was filed by respondent No.2 for grant of Succession Certificate in her favour for the debts and securities left by Shri Bansi Ram who expired on 6.8.2009 in Delhi. The said respondent No.2 claimed that deceased was her father. The petitioner who is the wife of late

Shri Bansi Ram had filed an objection stating that respondent No.2 is neither a natural nor adopted daughter of late Shri Bansi Ram. There is no Deed of Adoption with the consent of the petitioner who is the wife of late Shri Bansi Ram. Objections of the petitioner were dismissed and judgment was pronounced on 2.7.2015.

3. The petitioner filed the present appeal under Section 384 read with Section 388 of the Indian Succession Act, 1925 seeking to challenge the judgment dated 2.7.2015 before the appellate court. There is a delay of 234 days in filing the appeal. Hence, an application under Section 5 of the Limitation Act was filed. No notice was issued to the respondent and the appellate court dismissed the application noting that the period of limitation prescribed is 30 days from the date of the impugned order. The trial court concluded that the facts show gross negligence, deliberate inaction and lack of bona fide on the part of the appellant in filing the appeal within time. The appellate court noted that the petitioner is a teacher by profession and not an illiterate or ignorant of her rights. Her contention that she was not informed of the judgment was not to be believed as the order of the court are available on internet.

4. I have heard learned counsel for the petitioner and respondent No.1. Respondent No.2 was never served before the trial court.

5. A perusal of the application filed by the appellant under Section 5 of the Limitation Act shows that the petitioner has stated the following grounds for the delay in filing of the appeal:-

“5.That the appellant was not duly informed about the correct status of the matter. The appellant on contacting her counsel in mid of September was given to understand that the arguments have been concluded and the judgment has

been reserved. From time to time, on inquiries by the appellant, she was not made aware of the correct position and as such it was beyond her knowledge that the judgment has already been pronounced on 02.07.2015.

6. That the factum of the impugned judgment being passed on 02.07.2015 came to the knowledge of the Appellant when she contacted the office of Respondent No.3 i.e. Executive Engineer, P.Division, CPWD, Andrews Ganj, New Delhi in mid January 2016 to inquire about the status of the application for grant of pensionary benefits as also the status of the matter filed in the Ld.Trial Court. The appellant also visited the office of Respondent No.3 in this regard in January 2016. As such, it came to the knowledge of the appellant for the first time in January 2016 that the judgment has been pronounced as early as on 02.07.2015. The appellant has accordingly taken immediate steps to engage a new counsel and arrange for the paper book/documents which were part of the record of the learned trial court. It is in the aforesaid circumstances that the delay in filing the present appeal had occurred. The same is not due to the negligence on the part of the appellant.”

6. The application is supported by an affidavit of the petitioner. The averments made in the application show that the petitioner was not informed by her counsel about the judgment having been pronounced on 2.7.2015. The application further elaborates that the petitioner got knowledge of the judgment when she contacted the Executive Engineer, CPWD, New Delhi in mid January 2016 to inquire about the status of her application for grant of pensionary benefits. She has thereafter taken steps to file the present appeal. In my opinion, the above grounds would prima facie constitute sufficient cause as stated in section 5 of the limitation Act. Accordingly, the impugned order suffers from material irregularities.

7. The order dated 12.07.2010 is quashed. The matter is remanded back to the appellate court to be adjudicated upon afresh after due notice to respondent No.2 on the application of the petitioner under Section 5 of the Limitation Act. Petition stands disposed of.

8. Matter be listed before the appellate court on 2.9.2016.

JAYANT NATH, J

AUGUST 16, 2016

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