

\$~A-30

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

+ CM(M) 1061/2016

PRIT SINGH

..... Petitioner

Through Mr.Anis Mohammad, Advocate.

versus

VIKRAM SINGH & ORS

..... Respondents

Through Ms. Shobha Gupta and Mr.Rajesh
Sachdeva, Advocates for SDMC.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **24.10.2016**

CM No. 39086/2016 (exemption)

Exemption is allowed subject to just exceptions.

CM No. 39085/2016 (delay)

For the reasons stated in the application, the delay of 37 days in re-filing the present petition is condoned.

The application is disposed of.

CM No. 39084/2016 (u/O 41 R 27 CPC to place on record some additional documents)

This is an application to place on record the additional documents being the medical documents of the petitioner/counsel for the petitioner.

For the reasons stated in the application, the same is allowed and the two documents are taken on record.

CM(M) 1061/2016

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 08.06.2016 by which an application under Order 41 Rule 3A CPC read with Section 5 of the Limitation Act for condonation of delay in filing the appeal was dismissed.

2. The petitioner had filed the suit for permanent and mandatory injunction. The suit after trial was dismissed vide order dated 25.01.2016. Against the said order, the present appeal was filed which as per the application of the petitioner was delayed by 47 days. In the application, it is stated that after receipt of a certified copy of the order on 11.03.2016, the petitioner suffered an injury on his right leg and due to the same, he was unable to contact his previous counsel. After having recovered, he requested his previous counsel to return the file. The previous counsel handed over the file only on 05.05.2016 whereafter a new counsel was engaged who is also said to have suffered from stomach infection, viral fever, throat infection, cold and cough and is said to have under treatment up to 25.05.2016. In these circumstances, it was stated that there is a delay in filing of the appeal of 47 days.

3. By the impugned order, the appellate court noted the submissions made by the petitioner and held that the delay in filing of the appeal is actually of 58 days. It is also noted that the delay in filing the appeal is said to be on account of injury of the petitioner/ill health of the counsel but no medical certificates have been placed on record. Accordingly, holding that the petitioner has failed to show sufficient cause for condonation of delay, the application was dismissed. As the application for condonation of delay

was dismissed, the appeal of the petitioner has also been dismissed.

4. Before this court, however, the petitioner has placed on record the medical certificates of the petitioner and of the counsel along with the application being CM No. 39084/2016 under Section 41 Rule 21 CPC to permit filing of the medical certificates which application stands allowed.

5. I have heard the learned counsel for the parties.

6. Learned counsel appearing for the respondents has vehemently argued that the certificates now sought to be filed were not before the appellate court. He further submits that the certificates are erroneous on the face of it and do not depict the correct picture. It is submitted that the first certificate of injury of the petitioner is of 28.04.2016 which was never produced before the appellate court though available. Similar is the case of the second certificate.

7. Section 5 of the Limitation Act reads as follows:-

“5 Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

8. The settled legal position is that the delay of each day's is not to be explained in minute detail. In my opinion, the petitioner has averred about his injuries and about the counsel being indisposed on account of which, there is said to have been a delay of 58 days. The application of the petitioner is supported by an affidavit swearing the facts stated in the application for condonation of delay on oath. A detailed trial was not to be

held on the averments being made in the application. It would not be proper to disbelieve the averments made in the application seeking condonation of delay merely because supporting documents were not placed before the appellate court.

9. In any case, the supporting documents have now been placed before this court and this court has taken those documents on record. If we take those documents on record, it becomes clear that the petitioner has been able to show sufficient cause for not preferring the appeal within the prescribed period. Accordingly, in view of the above the impugned order suffering from material irregularity is set aside subject to payment of costs of Rs.7,500/-.

10. The petition is allowed in the above terms.

11. The parties to appear before the concerned District Judge who will mark the matter to the concerned court on 17.11.2016.

JAYANT NATH, J

OCTOBER 24, 2016
rb