

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

+ **RSA No.315/2016**

% **21st October, 2016**

REKHI EDUCATION SOCIETY (REGD.) Appellant

Through: Mr. C.K.Jha, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff against the impugned Judgment of the First Appellate Court dated 5.8.2016 by which the first appellate court has dismissed the first appeal as barred by limitation because there was an unexplained delay of 448 days in filing of the first appeal. The first appellate court found that the grounds for condonation of delay were not valid grounds for condoning the delay.

2. The reasons given for condonation of delay in the application for condonation of delay are contained in para 2 of the application under

Section 5 of The Limitation Act, 1963 read with the Order XLI Rule 3A

CPC and which para reads as under:-

“2. That the impugned judgment and decree was passed on 31.07.2012. However, on that day, the appellant/plaintiff was not present in the Court nor he was informed by the counsel about the listing of his case in arguments to be heard. It was in the first week of August, 2012, when the appellant/plaintiff inquired his counsel regarding the proceedings of the said case and he was told that the said case has already been dismissed by the Court of Ms. Richa Gusain Solanki, Senior Civil Judge, Delhi, vide judgment and decree dated 31.07.2013. The Appellant/plaintiff was shocked on becoming aware of the dismissal of the civil suit. The Appellant/plaintiff applied for the certified copy of the said judgment and decree. After applying the certified copies, of the judgment & decree the Sh. Harmeet Singh secretary of the appellant/plaintiff who was authorized to pursue the legal matters on behalf of the appellant society contacted the treasurer of the appellant-society Sh. Raj Kumar Gogna and assigned him the task of taking necessary action in the said matter of the society as well as to take requisite action required in the present case with prior approval of the president and members of the society as the appellant/plaintiff himself i.e. the President Mrs. Raveen Kaur and the Secretary Sh. Harmeet Singh of the appellant-society were busy in settling the matrimonial dispute of brother/brother-in-law of President and secretary of the appellant-society in Ludhiana in which the sister-in-law of the president/secretary of the appellant-society was trying to falsely implicate them i.e. Mrs. Raveen Kaur president of the appellant-society and their other family members in criminal offence of serious nature. The president of the appellant/plaintiff duly informed their counsel that the said case will be pursued by the treasurer of the appellant-society as all powers relating to the legal matters of the society are delegated to Sh. Raj Kumar Gogna in their absence due to the matrimonial dispute of their brother/brother-in-law in Ludhiana. The treasurer of the appellant-society became seriously ill and was unable to pursue the case on account of his serious medical ailment (Prostate & Kidney problem). It was in the first week of September 2012 that the counsel of the appellant/plaintiff society called the treasurer of the appellant-society Sh. R.K.Gogna who was under treatment for his medical ailments and was incapable of walking at that time. The counsel informed him that he has received the certified copies of the judgment and decree dated 31.07.2012 and that the time of appeal is running out and requested him to meet him in his office so that they can take further required action. On this, the treasurer of the appellant-society informed the counsel that he himself is medically not fit due to serious medical ailment (Prostate & Kidney problem) suffered by him and is incapable of walking. He also told the counsel that he will try to visit the office of the counsel as early as possible, but the treasurer of the appellant-society was unable to visit the office of the counsel on account of his serious

medical ailment (Prostate & Kidney problem). During this time, the counsel for the appellant/plaintiff many times tried to contact the president/secretary of the appellant-society as well but could not make contact with them as their mobiles were not reachable and their whereabouts were not known to anyone. It is pertinent to mention here that the Appellant/plaintiff i.e. president and secretary of secretary of society who went to Ludhiana to settle the matrimonial dispute of their brother/brother-in-law were being harassed by the Punjab police on account of false complaint bearing CR No. 202441 dated 19.09.2012 moved by their sister in law against Mrs. Raveen Kaur president of the appellant-society and her other family members leveling frivolous and false allegations of very serious criminal nature involving demand of dowry, misappropriation of dowry articles, cheating and forgery. The police was unnecessarily harassing and threatening them by raiding the house of president/secretary of the appellant-society in Delhi and their phones were also not reachable and they were constraint to leave their respective house to defend themselves. Later on, after few days, the treasurer of the appellant-society contacted the counsel for the appellant/plaintiff and informed him that he has becomes helpless and is unable to walk on account of his serious medical ailment (Prostate & Kidney problem) and as such unable to attend the court proceedings. He also informed the counsel that he has been advised complete bad rest by his doctor. The treasurer of the appellant-society Sh. Raj Kumar Gogna who was under-going serious medical ailment (Prostate & Kidney problem) during that time, miserably failed to visit office of the counsel of the appellant-society to take the necessary legal remedies of filing appeal on behalf of the society against the impugned order dated 31.07.2012 passed by Ms. Richa Gusain Solanki, Senior Civil Judge, Delhi. It was on 05.10.2013 the Counsel of Mrs. Raveen Kaur President of the appellant-society in Ludhiana informed the president of the appellant-society Mrs. Raveen Kaur that the said false and frivolous criminal complaint moved against her and her family members by Mrs. Mandeep Kaur has been decided in their favour and the complaint of Mandeep Kaur has been dismissed. The counsel also informed the president of the appellant-society that he became aware of this fact after the receipt of the certified copies of the said inquiry under RTI Act from Commissioner of Police Ludhiana. Thereafter, on 07.10.2013 the president and secretary of appellant-Society contacted the treasurer of the appellant society Sh. Raj Kumar Gogna to enquire about the status of said case, but they were surprised to know that no appeal has been filed till date and the treasurer of the appellant society Sh. Raj Kumar Gogna has not been able to visit the office of the counsel of appellant-Society for further legal action pertaining to this matter. On this, the Secretary of the appellant-society Sh. Harmeet Singh immediately contacted the counsel on 08.10.2013 and after getting the certified copies of the said judgment and decree dated 31.07.2012 from previous counsel of appellant/plaintiff namely Sh. K.V.Gopi, Advocate who clearly refused to file the appeal. On this the appellant took the case file from his previous counsel and inspected the case filed 09.10.2023 on 19.10.2013 and started searching the new counsel for

filing the appeal against the impugned order and ultimately appointed Vasisht & Sharma associates as the new counsels of the appellant-society and handed over the case file to them to pursue with the case on 29.10.2013. Mr. Sanjeev Vasisht Advocate filed an application under RTI dated 29.10.2013 in the DDA to get relevant documents and information which was required in preparing the present appeal which is being filed before this Hon'ble Court. On 25.11.2013 the said information was received by the counsel through RTI act. As such, due to the aforesaid sufficient reasons the accompanying appeal could not be filed earlier."

3. Though the aforesaid paragraph is a long one, essentially two reasons have been given for not filing of the first appeal in time. The first reason is that the President Mrs. Raveen Kaur and the Secretary of the society Mr. Harmeet Singh were not in Delhi because they were settling the matrimonial disputes of brother/brother-in-law of the President Mrs. Raveen Kaur and also of the Secretary in which the sister-in-law of the President and Secretary of the appellant/plaintiff/society was said to have falsely implicated the President Mrs. Raveen Kaur and her family members. In my opinion, this ground would have been good enough if there was sought condonation of delay of may be a few days or even a few weeks or a month or two inasmuch as persons can be held up in Ludhiana, which is not too far away from Delhi, for such continuous time of only a few weeks or a month or two, but it is almost impossible to believe that the President Mrs. Raveen Kaur and the Secretary Mr. Harmeet Singh did not come to Delhi at all from August, 2012 till when the first appeal was filed in November, 2013 or did not do any other normal worldly work in this period and nor is so observed

in the application seeking condonation of delay. Surely the President and the Secretary would have regularly come to Delhi in the 448 days period and it is not possible to believe that for 1 ½ years the President Mrs. Raveen Kaur and the Secretary Mr. Harmeet Singh remained only in Ludhiana because this is not so stated that the President Mrs. Raveen Kaur and the Secretary Sh. Harmeet Singh never came to Delhi or never resided in Delhi for this entire period of 1 ½ years because all that is stated is that the President and Secretary were “busy”. Obviously, being busy in a criminal case is only a convenient explanation but not a valid explanation and this Court refuses to believe that for around 1 ½ years the President and the Secretary could not file the first appeal including engaging an advocate for filing of the first appeal.

4. The second reason given is that the President gave the powers to the treasurer Sh. Raj Kumar Gogna to appoint an advocate and file the first appeal but the treasurer was not medically fit, however, the medical record filed of Sh. Raj Kumar Gogna does not show that Sh. Raj Kumar Gogna was completely confined to bed for this subject period of 1 ½ years and that Sh. Raj Kumar Gogna never did any other work or was incapable of doing normal activities. Therefore, even this reason is not believable. Counsel for the appellant/plaintiff orally argued as regards the second aspect

of Sh. Raj Kumar Gogna not being able to file the first appeal by stating that Sh. Raj Kumar Gogna had to sign the cheques for payment to the lawyer jointly with the President and which he could not, however, it is impossible to believe that Sh. Raj Kumar Gogna could not sign even once for 1 ½ years on the cheque book with the President Mrs. Raveen Kaur allegedly on account of prostate and kidney problem.

5. During the course of arguments, another reason was urged on behalf of the appellant/plaintiff for seeking condonation of delay that the earlier counsel did not take care, however, onus cannot be thrown on the advocate because the earlier advocate was not the sole advocate who could have filed the appeal because any other advocate could be contacted/engaged for filing of the first appeal. This reason therefore does not have any merit and is accordingly rejected. Various other reasons given against the advocate do not have any credibility for being accepted by this Court including the fact that the new advocate engaged for filing of the first appeal only filed an RTI application instead of filing a first appeal.

6. I would note that the courts are liberal in condoning delay but equally it is not the law that every application for condonation of delay has to be necessarily allowed otherwise why at all have a period of limitation.

7. I have also *prima facie* examined the merits of the matter and essentially it is seen that by the subject suit filed by the appellant/plaintiff/society it is seeking land from the respondent/defendant/DDA at concessional basis for opening of a school and this suit was dismissed on the ground that when the appellant/plaintiff/society completed all the formalities for grant of land, the old policy of respondent/defendant/DDA of granting of land at concessional rate had come to an end and lands were being given to the educational societies in Delhi by the respondent/defendant/DDA only as per auction. Though counsel for the appellant/plaintiff/society sought to argue that there is discrimination against the appellant/plaintiff/society inasmuch as plaintiff/society had applied for grant of land prior to coming into force the new policy and requirements of the old policy were completed before coming into force the new policy, however, it is conceded on behalf of the counsel for the appellant/plaintiff/society before this Court that only one society namely Nanaksar Thath Isshar Darbar was granted the land after coming into force of the new policy and this society was at serial no.35 in the list of priority for grant of land and that whereas the appellant/plaintiff/society was lower at serial no.59. Putting it in other words, it is not as if any other society was granted land at concessional rate although the present appellant/plaintiff/society had better priority but was

not granted land at concessional rates. The issue of discrimination against the appellant/plaintiff/society would have only arisen if only someone lower in priority had got allotment on the basis of the old policy but the appellant/plaintiff/society at a higher priority had not, and which is not the case of the appellant/plaintiff/society either by pleadings or even in terms of evidence led by the appellant/plaintiff/society.

8. Normally the courts are reluctant to dismiss matters on merits and delays, but in this case not only the delay is of a large number of 448 days, even on *prima facie* merits it is not found that appellant/plaintiff/society would be entitled to the concessional land. Though education is called as a 'non-profit' activity, it is very well known that education is one of the biggest businesses in Delhi giving benefit to the so called non-profit societies of monetary income running into crores and crores of rupees and who can now get land allotted to them from respondent/defendant/DDA, may be not at fixed concessional rates.

9. In view of the above, no substantial question of law arises for this Regular Second Appeal to be entertained under Section 100 CPC. Dismissed.

OCTOBER 21, 2016
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VALMIKI J. MEHTA, J