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

+ CM(M) 161/2016

NAUSHAD ALI @ NOSHI Petitioner
Through Ms.Shama, Adv.

versus

MOHD AZAM NIZAMI & ORS Respondent
Through Mr.S.H.Nizami and Mr.S.S.Nizami,
Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **09.01.2017**

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 31.10.2015 of the appellate court whereby the appeal filed by the petitioner was dismissed as being beyond the period of limitation and for not giving any facts which would construe sufficient cause for condonation of delay.
2. The respondent/landlord had moved an eviction petition under section 14(1)(e) of the Delhi Rent Control Act for house bearing No.107, Basti Hazrat Nizamuddin, New Delhi. The Eviction Petition was dismissed by the ARC vide order dated 10.4.2003. Against the said dismissal, a revision petition was filed before this court which was allowed on 29.11.2011. A Special Leave Petition was filed before the Supreme Court. On 19.3.2012 the Supreme Court was pleased to dismiss the said SLP but granted one year time to the petitioner to vacate the premises subject to furnishing undertaking within four weeks.

3. It is the case of the respondent that no undertaking was filed by the petitioners and hence the respondents executed the eviction order and have regained possession of the property.

4. Now, the present application is filed by the petitioner under section 19(1) and (2) of the DRC Act seeking re-entry/recovery of possession from the respondents. It is the submission of the petitioner that the respondents have illegally taken possession of the tenanted premises and are not occupying the same themselves as advocate of the respondents have illegally connected the suit property with his own house adjacent to the suit property.

5. The trial court after detailed evidence recorded a finding of fact that the tenanted house No.107 has not been merged with house No.106. It also did not accept the report of the Local Commissioner and came to a finding that the petitioners have failed to establish any grounds under section 19(1) of the DRC Act.

6. Against the above order of the ARC dated 1.6.2015, the petitioners filed an appeal on 13.10.2015 before the appellate tribunal. Alongwith the appeal an application for condonation of delay was filed. The reasons given in the application for condonation of delay were that the petitioner was not able to file the appeal on time as she is an illiterate and poor person and with great difficulty found a counsel who agreed to do the case without money. But due to busy schedule of the counsel and also receiving the case file from the old counsel the appeal could not be filed in time. The appellate court held that these grounds do not constitute sufficient grounds for the purpose of condonation of delay. Merely because the counsel was busy in some other work was held to be no ground to take away a valuable right that has accrued to the other side by flux of time.

7. I have heard learned counsel for the parties. Learned counsel appearing for the respondents has strongly submitted that the petitioners are only abusing the process of the court. The first round of litigation which went up to the Supreme Court. Now the petitioner has initiated the second round of litigation on baseless facts.

8. In my opinion, there are no cogent reasons to interfere in the order of the appellate court. Merely because the counsel was busy in some other work cannot be a ground to justify condonation of delay in filing of the appeal. There is no merit in the petition. Same is dismissed. All pending applications, if any, also stand dismissed.

JAYANT NATH, J

JANUARY 09, 2017

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