

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

+ **RSA No. 115/2017**

% **18th April, 2017**

NARENDER KUMAR Appellant
Through: Mr. K.K. Sharma and Mr. S.
Khan, Advocates.

versus

SURENDER SINGH Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 14252/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

**RSA No. 115/2017 and C.M. Appl. No. 14253/2017 (for
condonation of delay of 262 days in filing the appeal)**

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the impugned judgment of the First Appellate Court dated 8.3.2016 refusing to condone the delay of about one year in filing of the first appeal.

2. The first appellate court has given the following valid reasons in paras 6 to 9 of the impugned judgment, and which paras read as under:-

“6. Perusal of the record shows that present appeal has been filed by the appellant against the impugned judgment and decree dated 06.09.2014 by which suit filed by the appellant for recovery of money against the respondent was dismissed. The impugned judgment was passed on 06.09.2014 and the present appeal against the impugned judgment has been preferred by the appellant on 07.10.2015 i.e. after a delay of about one year.

7. The ground of delay as stated by the appellant in the application that though the appeal was ready in November 2014 but due to sickness and hospitalization of his counsel, the appeal could not be filed in time is without any substance. The appellant has not given any particulars of the hospital where his counsel was hospitalized leaving aside the medical documents to substantiate the said contention.

8. Another contention of the appellant is that while appearing in another case he inquired about the appeal from the counsel to which he realized his mistake and initiated steps to file the same. It is highly surprising that appellant did not inquire from the counsel for about one year as to whether appeal has been preferred or not. It is not believable that the appellant kept mum for about one year and did not take steps for filing process fee etc. If the appeal was ready in November 2014 as stated by the appellant in the application, then nothing prevented the appellant to file the same in the court. Again, particulars of the another case where the appellant inquired about filing of the appeal from the counsel is not given.

9. The appellant has not disclosed the sufficient grounds for condonation of huge delay of about one year in filing the appeal. In the absence of any medical documents and particulars, the whole averments made in the application are vague, evasive and not reliable. Accordingly, the application is hereby dismissed being devoid of any merit.”

(underling added)

3. A reading of the aforesaid paras shows that appellant failed to file any particulars and proof as to where appellant's counsel was hospitalized, and therefore this ground was disbelieved by the first appellate court. Also, the first appellate court has noted that there is no reason why the advocate would suddenly be asked by the appellant as

what had happened to the appeal and found that the advocate had in fact forgotten about the same.

4. I may note that the appellant was the plaintiff before the trial court in the suit for recovery of moneys claiming that he was the son of the deceased Sh. Govind Singh. The Trial Court has noted in its judgment dated 6.9.2014 that appellant could not produce direct evidence in the form of marriage certificate or photographs or video recordings of the marriage to show that his mother was married to the deceased Sh. Govind Singh. Also the trial court in the judgment has noted the changing stands of the appellant because in the probate proceedings the appellant has claimed to be the adopted son of the deceased. Even as regards the issue of adoption no adoption deed adopting the appellant by Sh. Govind Singh was filed by the appellant.

5. In view of the above there is no reason to interfere with the impugned judgment of the first appellant court dismissing the appeal of the appellant as time barred and by refusing condonation of delay of about one year.

6. Dismissed.

APRIL 18, 2017/ AK

VALMIKI J. MEHTA, J