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

+ RSA 166/2016

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr.Sameer Nandwani, Advocate.

versus

RAJ KUMAR Respondent

Through: Mr.Shahid Ali and Mohd. Sharid,
Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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13.01.2017

RSA 166/2016

1. The appellant is aggrieved by the order dated 22nd April, 2016 whereby the First Appellate Court dismissed the application filed under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal bearing RCA No.05/2016.

2. The grievance of the appellant is that RCA No.5/2016 has been dismissed by the learned ADJ-06(West) on technical grounds i.e. on the ground of delay of 118 days in filing the appeal. Mr.Sameer Nandwani, Advocate for the appellant has submitted that the reasons for delay in filing RCA No.05.2016 were duly explained before the First Appellate Court by filing an application under Section 5 of Limitation Act seeking condonation of delay. He has further submitted that the respondent can be duly compensated by cost and the appeal may be directed to be heard and disposed of on merits.

3. In the case S.Ganesharaju (Dead) Through LRs. Vs. Narasamma (Dead) Through LRs and Ors. (2013) 11 SCC 341 the Apex Court has discussed the expression ‘sufficient cause’ as appearing in Section 5 of Limitation Act and held as under:-

‘17. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

18. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that Appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily.’

4. Taking into consideration that the delay in filing the appeal before the First Appellate Court is 118 days which has been explained and that the respondent can be duly compensated by awarding suitable cost, the instant appeal is allowed. The order dated 22.04.2016 passed in RCA No.5/2016 is set aside subject to payment of cost of ₹20,000/-.

5. It is directed that the cost should be paid to learned counsel for the respondent within one week from today. To facilitate the appellant to pay the cost within stipulated time, learned counsel for the respondent has furnished not only his office address but also his mobile number to learned counsel for the appellant today in the Court.

6. It is made clear to the appellant that if cost is not paid to learned counsel for the respondent within a week from today, the instant appeal shall stand dismissed.
7. The parties are directed to appear before the concerned First Appellate Court on 31st January, 2017.
8. A copy of this order be sent to the concerned Court through the concerned District Judge.
9. As prayed, copy of the order be given dasti to learned counsel for the appellant under the signature of Court Master.

CM No.23621/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

JANUARY 13, 2017
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