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

+ RSA 368/2016

VIMLA SHARMA

..... Appellant

Through: Mr.Sudeep Dey, Advocate

versus

LAND & DEVELOPMENT OFFICE

..... Respondent

Through: Ms.Mrinalini Sen Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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03.02.2017

1. This Regular Second Appeal has been preferred by the appellant impugning the order dated 04.10.2016 passed by learned First Appellate Court in RCA No.19/2016 dismissing the application under Section 5 of Limitation Act for condonation of delay of six months in preferring the appeal. As a consequence the appeal also stands dismissed being barred by limitation.

2. Heard learned counsel for the parties.

3. The Civil Suit No.67/2014 was filed by the appellant/plaintiff for a decree of mandatory injunction which has been dismissed by the learned Trial Court vide judgment dated 30.04.2015.

4. Feeling aggrieved, the appellant/plaintiff preferred RCA No.19/2016 assailing the judgment dated 30.04.2015 passed by the learned Trial Court. Alongwith the appeal, the appellant/plaintiff also filed application under Section 5 of Limitation Act for condonation of delay of six months in filing the appeal. The First Appellate Court, vide order dated 04.10.2016, dismissed the application seeking condonation of delay for the reason

recorded as under:-

'The appellant has made bald submissions in the application that the certified copy of the impugned judgment was not supplied to her on time though she had applied for the same on time. There is no document supporting the contention of the appellant of not having received the certified copy of impugned judgment from the concerned branch on time on account of lapse of the Copying Agency branch to prepare the same in time. In absence of the same, the bald submission cannot be believed. No ground is made out for condoning the delay in filing the appeal. The application of appellant under Section 5 of Limitation Act is dismissed. TCR be sent back to Ld. Trial Court along with copy of the order.'

5. The principles governing the discretion for condonation of delay under Section 5 of Limitation Act have been laid down in the decision reported as N.Balakrishnan vs. M.Krishnamurthy AIR 1998 SC 3222. The relevant paras No.11 to 13 of the report read as under:-

'11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae ut sit finis litum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but

seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, MANU/SC/0335/1968 : [1969]1SCR1006 and State of West Bengal v. The Administrator, Howrah Municipality, MANU/SC/0534/1971 : [1972]2SCR874a .

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.'

6. Reverting to the facts of the instant case, the reasons given by the First Appellate Court for not being able to file the appeal within time was for the reason that certified copies were not made available within time though applied well on time.

7. The First Appellate Court should not have dismissed the appeal on technical grounds that no document was filed to support the above assertion.

It had the effect of depriving the aggrieved party to get the matter adjudicated on merits just for the reason that there was some delay in filing the appeal. It was well within the discretion of the Court to condone the delay.

8. Learned counsel appearing on behalf of the respondent submits that in the given facts and circumstances, appropriate order may be passed subject to such terms and conditions as deemed fit by the Court to enable the appellant to argue his case on merits.

9. Taking into consideration the reasons explained for not being able to file RCA No.19/2016 within period of limitation, the order dated 04.10.2016 passed in RCA No.19/2016 is set aside and delay of six months in preferring RCA No.19/2016 is condoned, subject to payment of cost of ₹10,000/- payable to the respondent within four weeks from the date of order.

10. On the appellant making payment of cost of ₹10,000/- to the respondent within four weeks, RCA No.19/2016 shall stand revived to its original number.

11. The learned First Appellate Court is directed to hear and dispose of the appeal on merits.

12. This Regular Second Appeal stands allowed in above terms.

13. It is made clear to learned counsel for the appellant that if cost is not paid within four weeks, the instant appeal shall stand dismissed.

14. Parties are directed to appear before the learned First Appellate Court on 14th March, 2017.

15. A copy of this order be sent to the concerned First Appellate Court and be also given dasti to learned counsel for the parties.