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

+ CM(M) 27/2017

TEK RAM (DECEASED) THR HIS LRS & ORS. Petitioners

Through: Mr.Satish Kumar, Advocate.

versus

PREM PRAKASH & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **03.05.2017**

1. The petitioners have filed the instant petition impugning the order dated 29th November, 2016 whereby the application filed by the petitioners under Section 5 of Limitation Act seeking condonation of delay of 881 days in filing application under Order 41 Rule 19 CPC for restoration of the appeal, has been dismissed by the learned Appellate Court and consequently, application under Order 41 Rule 19 CPC has also been dismissed.

2. Mr.Satish Kumar, Advocate for the petitioners has submitted that the petitioners No.1 (i) (a) to (f), (ii) to (vi) are legal heirs of deceased Sh.Tek Ram (plaintiff No.1 and appellant No.1 before the Courts below). Petitioner No.2 Sh.Chet Ram and Petitioner No.3 Sh.Hari Ram were plaintiff/appellant Nos.2 and 3 before the Courts below. Learned counsel for the petitioners has further submitted that petitioners are illiterate villagers. The counsel tried to contact the petitioners but could not succeed, resulting in delay which may be condoned in the interest of justice.

3. Perusal of the record shows that Civil Suit No.1427/2008 (Old No.130/1994) titled as Tek Ram & Ors. vs. Prem Prakash Sharma & Anr.

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was filed seeking the relief of permanent injunction and declaration. In the memo of parties, the particular of the three plaintiffs has been mentioned as under:-

- ‘1. *Sh.Tek Ram S/o Sh.Jahria,*
2. *Sh.Chet Ram S/o Sh.Jahria,*
3. *Sh.Hari Ram S/o Sh.Jahria,*
All R/o H.No.330, Bazar Mohalla,
Village & P.O.Tuglakabad, Delhiplaintiffs’

4. In the application seeking condonation of delay in filing the application for restoration of the appeal bearing RCA No.9/2013, following grounds have been taken for condoning the delay and seeking restoration of the appeal:-

- (i) The appeal was listed on 4th January, 2014 but due to bonafide mistake of the office clerk of the counsel for the petitioners the matter was wrongly posted in the diary as 4th February, 2014.
- (ii) On 4th February, 2014 when the counsel appeared, he came to know that the matter has already been dismissed in default on 4th January, 2014.
- (iii) Counsel could not contact the petitioners as there was no contact of the petitioners/appellants was available in the office of the counsel for the appellants.
- (iv) The petitioners being agriculturists, inarticulate and are not aware of the Limitation Act and the Procedural law.
- (v) The delay was due to above reasons and not deliberate or intentional.

5. The application seeking condonation of delay in filing the restoration application as well as the application seeking restoration of the appeal have been signed by twelve petitioners which include the original plaintiffs No.2

and 3 and legal heirs of deceased Tek Ram – plaintiff No.1. The application is supported by an affidavit of only Sh.Chet Ram i.e. plaintiff No.2 in Civil Suit No.1427/2008. The address of Sh.Chet Ram mentioned in the affidavit is the same as mentioned in the plaint. No communication by post or through messenger sent by the counsel for the petitioners on the address mentioned in the plaint, is brought on record. The petitioners are residents of Delhi and continue to reside there even till filing of the application seeking restoration of the appeal. If the counsel was unable to contact the petitioners for whatsoever reasons, it was for the petitioners to be vigilant to pursue their case by contacting their counsel and not to sleep over the matter for 881 days.

6. The application seeking condonation of delay does not disclose the name of the Clerk who wrongly noted the date of hearing as 4th February, 2014 and it was not even accompanied by his affidavit. It is not even the case of the petitioners that the counsel was not present in the Court when the date was given as 4th January, 2014.

7. The application was not even accompanied with the copy of the diary maintained by learned counsel for the petitioners. It is not even pleaded that at any time inspection was carried out by learned counsel for the petitioners to find out from the record the addresses of the petitioners so as to contact them to apprise them about the dismissal of the appeal and advise them to seek restoration of the appeal.

8. So far as contention made by learned counsel for the petitioners that the petitioners are illiterate villagers, hence delay in filing the application seeking restoration of the appeal may be condoned is concerned, all the petitioners are residents of Delhi, litigating for all these years in the Courts

at Delhi and had also preferred an appeal after losing the battle before learned Trial Court.

9. It is no doubt true that the law of limitation may harshly affect a particular party. But, then, it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

10. In the facts and circumstances of this case, I am of the considered view that no reasonable or satisfactory explanation had been offered by the petitioners for condonation of inordinate delay of 881 days in filing the application seeking restoration of the appeal.

11. The learned Appellate Court has rightly declined the prayer for condonation of delay of 881 days in filing the application seeking restoration of the appeal.

12. The impugned does not suffer from any illegality or perversity which calls for any interference by this Court in exercise of power under Article 227 of the Constitution of India.

13. The petition is dismissed.

PRATIBHA RANI, J.

MAY 03, 2017

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