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

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FAO(OS) 246/2017

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Date of decision : 13th September, 2017

CHIRANGI LAL (DECEASED) THR
LEGAL REPRESENTATIVE

..... Appellant

Through : Ms. Jyoti Singh, Sr. Adv. with
Mr. T.N. Saxena,
Mr. H.C. Kharbanda and
Mr. Naveen, Advs.

versus

BISHAMBER SHARMA & ORS

..... Respondents

Through : Mr. Mehul Parti, Adv. for
R-2.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This appeal assails the order dated 13th July, 2017 passed in CS(OS) No. 740/2013 whereby the learned Single Judge has allowed two applications, the first one being IA No.22119/2015 (U/O XXII Rule 3 of the Code of Civil Procedure, 1908) for bringing on record legal heirs of the sole plaintiff Chirangi Lal and IA No. 22120/2015 (U/s. 5 of the Limitation Act) praying for condonation of delay in filing IA No. 22119/2015.

2. The appellant is stated to be a poor agriculturist and we are informed that he is not in a position to pay the costs as awarded which amount would be extremely onerous upon him. The appellant had filed

the suit bearing CS(OS)No.740/2013 *inter alia* for declaration contending that the respondent has dishonestly got a sale deed executed of agricultural land belonging to the appellant on the force of a power of attorney registered before the Sub-Registrar, Gwalior, M.P. A delay in adjudication does not benefit the appellant in any manner.

3. We have heard Ms. Jyoti Singh, learned senior counsel for the appellant and Mr. Mehul Parti, learned counsel for the respondent no.2.

4. The impugned order records that the application under Order XXII Rule 3 was filed within time yet, there was delay in refilling of 269 days after removal of objections.

5. The respondent has not assailed the condonation of the delay or the grant of the application for bringing on record the legal heirs by the order dated 13th July, 2017.

6. The present appeal has been filed by the legal heirs of the deceased plaintiff assailing only the portion of the order whereby while allowing the application, the learned Single Judge has imposed costs of Rs.5 lakhs. The submission on behalf of the appellant is that the quantum of costs is extremely onerous and in fact, no negligence or lack of diligence can be attributed to the appellants. It is submitted by Ms. Jyoti Singh, learned Senior Counsel for the appellant that the sole plaintiff was a poor agriculturist. Perusal of the application as well as the appeal would show that no fault therein is attributable to the appellant. However, the dalliance, if the reasons stated in the application for condonation of delay could be so called, was occasioned in the office of the counsel for the plaintiffs.

7. At the same time, it cannot at all be denied that there has been delay in removal of the objections notified by the Registry on these two

applications. Therefore, the respondents are entitled to be compensated by reasonable costs for the delay which has occasioned.

8. We would normally not interfere in such matters. However, the sole plaintiff is stated to have been a poor agriculturist. It was the incident of his unfortunate demise which necessitated the application under Order XXII of the CPC for bringing on record his legal representatives. In these facts, given the impoverishment and the nature of the delay in this case, it may not be fair to deprive the appellants of adjudication because they cannot pay the awarded amount.

9. In view thereof, the direction to imposing costs of Rs.5 lakhs made in the impugned order dated 13th July, 2013 is modified and it is directed that the applications for condonation of delay and bringing on record legal heirs of the deceased-plaintiff is allowed subject to payment of costs of Rs.15,000/-. The costs shall be paid within four weeks from today.

It is made clear that this order shall not be cited as a precedent.

This appeal is allowed in the above terms.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 13, 2017/kr