

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23.10.2017

W.P. (C) 8073/2017

RAJIV JAIN & ANR

..... Petitioners

Through: Mr. Rajiv K. Nanda, Ms. Aastha Jain
and Mr. Sanjeev K. Balyan,
Advocates.

Versus

REGISTRAR CO-OPERATIVE & ORS

..... Respondents

Through Mr. Ramesh Singh, Standing
Counsel along with Mr. Sandeepan
Pathak, Advocate for respondent No.
1.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J (ORAL)

1. The present writ petition assails an order dated 23rd May, 2017, rendered by the Delhi Co-operative Tribunal (hereinafter referred to as 'Tribunal') in Miscellaneous Application No. 03/2017 filed in Appeal No. 190/2008/DCT; whereby, an application analogous to Order XLI Rule 19

read with Section 151 Code of Civil Procedure, 1908, seeking restoration of the appeal along with an application under Section 5 of the Limitation Act for condonation of delay were dismissed.

2. Mr. Rajiv K. Nanda, learned counsel appearing on behalf of the petitioner, would vehemently urge that although the application for restoration, as above- stated, was filed about four and a half years from the date of the order dismissing the proceedings; the delay was occasioned on account of sufficient cause, inasmuch as, the petitioner acquired knowledge of the said order only on 28th December, 2016, when purportedly a police officer (unnamed) visited his premises (unspecified) with a warrant of arrest.

3. A plain reading of the order impugned in the present petition clearly reveals as follows:-

(a) On 30th March, 2012, learned counsel for the petitioner appeared before the Tribunal, when the matter came to be adjourned on account of non-availability of the arbitration record to 7th May, 2012 at 11:30 a.m;

(b) On 7th May, 2012, there was no appearance on behalf of the petitioner and the matter was further adjourned to 5th July, 2013 at

11:30 a.m for awaiting the said record from the office of Registrar Co-operative Societies.

(c) However the Tribunal, proceeding on the presumption that there was a typographical error in the date fixed for the hearing of the appeal, took the same up on 5th July, 2012, and dismissed the same in default on account of non-appearance on behalf of the petitioner.

4. In view of the foregoing facts, it has been asserted on behalf of the petitioner that his absence before the Tribunal on 5th July, 2012 was not intentional but *bonafide* and beyond his control, and that in any event he had been informed by his counsel in the proceedings that a fresh notice would be issued as and when the record of the Arbitration was made available to the Tribunal.

5. The Tribunal after observing that there had been no appearance on behalf of the appellant, even on an earlier occasion, before the appeal came to be dismissed on 5th July, 2012; and that neither any specific reason with regard to the counsel, who had purportedly informed the petitioner qua the issuance of fresh notice by the Tribunal subsequent upon the receipt of Arbitrator's record nor any details of the warrant of arrest or the date on which it had been issued or the police officer who had sought to execute it

having been furnished in the applications, there was no justification to condone the delay in filing the application for restoration. The application was accordingly dismissed as being hopelessly barred by limitation.

6. Needless to state, an application for restoration of appeal has to be instituted within 30 days from the date of dismissal. In our view, the submissions made on behalf of the petitioner, both before the Tribunal as well as before this Court, do not disclose sufficient cause for restoration of the appeal preferred by the petitioner on merits.

7. It would also be trite to state that the petitioner cannot be permitted to awake from deep slumber belatedly.

8. In view of the foregoing, there is no merit in the present petition. The present petition devoid of merits and accordingly dismissed.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

OCTOBER 23, 2017

RS