

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

% Date of decision: 25th July, 2018

**+ RSA 105/2018, CM No.24828/2018 (u/O 41, R.5 CPC for stay)
and CM No.28429/2018 (for condonation of 1413 days delay in
filing)**

NAZMA BEGUM

..... Appellant

Through: Mr.Surinder Anand, Ms.Sugandha
Anand, Advocates

Versus

ALI ABBAS

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the CPC impugns the order (dated 29th August, 2014 in RCA No.48/2013 of the Court of Additional District Judge, East) of dismissal of First Appeal, under Section 96 of the CPC preferred by the appellant / defendant against the judgment and decree [dated 26th March, 2013 in Suit No.197/2012 (old No.10/2004) (Unique case ID No.02402C0475502004)] for recovery of Rs.1,29,625/- together with interest and costs in favour of the respondent / plaintiff and against the appellant / defendant, as a consequence of dismissal of the application accompanying the First Appeal for condonation of 41 days delay in filing the First Appeal.

2. This appeal is also accompanied with an application for condonation of 1413 days delay in filing thereof.

3. The appeal along with the application for condonation of delay came up before this Court first on 20th July, 2018 when, besides observing that prima facie no satisfactory explanation for condonation of delay had been given, it was enquired from the counsel for the appellant / defendant / judgment debtor as to how the second appeal is maintainable when there is no judgment and decree of the First Appellate Court and on request of counsel for the appellant, the hearing adjourned to today.

4. Today, the aspect of maintainability of the second appeal has been decided by a separate order wherein the appeal has been held to be maintainable.

5. The counsel for the appellant / defendant / judgment debtor has been heard.

6. The reason given for the delay of 1413 days in filing this appeal is:

- (i) that the counsel for the appellant / defendant / judgment debtor who was conducting the first appeal left the rental accommodation which he was occupying and thus, the appellant / defendant / judgment debtor lost contact with the counsel and was made to understand that that suit of the respondent / plaintiff / decree holder had been dismissed;
- (ii) that the appellant / defendant / judgment debtor, only on 2nd February, 2018 came to know that the first appeal preferred by her had been dismissed, when the respondent / plaintiff / decree holder sought execution of the money decree;

(iii) thereafter, the present counsel was engaged and the appeal got prepared and had been filed;

7. Except for making a bald statement that the appellant / defendant / judgment debtor had contacted the advocate in the First Appeal, namely, Shailendra Kumar Singh at B-31, DDA Colony, New Zafrabad, Delhi and who had assured the appellant / defendant / judgment debtor that he will take prompt action against the order dated 29th August, 2014 supra, nothing is shown that such an advocate exists or was functioning at the address given; no whereabouts at present of Shailendra Kumar Singh have also been given.

8. The appellant, along with the Memorandum of Appeal, as Annexure-P6, has filed the Memorandum of First Appeal preferred by her and which First Appeal is found to have been preferred by Mr.D.P. Aggarwal and Mr.Joginder Kumar, Advocates and not by Mr.Shailendra Kumar Singh, Advocate. The counsel for the appellant, inspite of asking, is unable to show proceeding of any date in the first appeal where Mr.Shailendra Kumar Singh, Advocate appeared on behalf of the appellant or any document to show that Mr.Shailendra Kumar Singh was engaged by the appellant for the purpose of the Second Appeal.

9. There is thus no material before this Court on the basis of which it can be said that there is a satisfactory explanation for the long delay in preferring this second appeal.

10. The learned Additional District Judge, vide the impugned order, dismissed the application of the appellant for condonation of delay in

preferring the First Appeal, also reasoning that it was the plea of the appellant / defendant / judgment debtor that she did not come to know of the decree passed by the Suit Court and which plea was found to be contrary to the suit record.

11. Suffice it is thus to state that neither is there any sufficient cause for condonation of delay in filing the First Appeal nor is any error found in the reasoning given by the First Appellate Court for dismissal of the application for condonation of delay in preferring the First Appeal and consequent dismissal of the First Appeal.

12. Though this appeal is liable to be dismissed in *limine* for the aforesaid reason only, but to satisfy the judicial conscience, the counsel for the appellant has also been heard on merits.

13. The counsel for the appellant has drawn attention to Page 22-23 of the Memorandum of Appeal setting out the following substantial questions of law claimed to be arising in this appeal and of which, only question No.2, of the suit claim being barred by time, is urged:

“1. Whether the First Appellate Court of Additional District Judge Sh. Surinder Kumar Sharma was justified in dismissing the first appeal presented on behalf of the appellant under Section 96 of the Code of Civil Procedure in RCA No.48/2013 on the sole ground of delay of 41 days in filing the first appeal despite the fact that the first Appeal was also supported with an Application under Section 5 of the Limitation Act for condonation of the aforesaid delay?

2. Whether the Trial Court of learned Senior Civil Judge, Karkardooma is justified in entertaining the

recovery Suit filed by the Respondent Plaintiff beyond the period of Limitation of 3 years? Because the friendly loan of 85,000/- was disbursed on 17.10.2001 as alleged by the Respondent/Plaintiff to the Appellant and no interest was chargeable on the principal amount and on the same day one post dated cheque No.648186 i.e. for 18.12.2001 was allegedly issued by the Appellant.

3. Whether the Respondent / Plaintiff is entitled to charge interest on the principal amount of Rs.85000/- in his plaint amounting to Rs.1,29,625/- after 3 years and two months when he presented his plaint for recovery of the aforesaid amount.

4. Whether it is justified on the part of Respondent who kept on sleeping for the whole period of 3 years and two months to initiate proceedings for recovery of the said amount within a period of 3 years as prescribed by the law of the land.

5. Whether it is justified and possible on the part of Respondent / Plaintiff who had disbursed a friendly loan to a stranger Muslim Pardanashin Lady whom he had claimed as his friend.

6. Whether it is justified on the part of Respondent / Plaintiff who have received the amount of Rs.85,000/- from the husband of the Appellant on 23.12.2001 and written down a receipt of the said amount under his hand and signature for the disputed cheque No.648186 dated 18.12.2001?"

14. It is argued:

- (i) that as per the averments in the plaint, the cheque dated 18th December, 2001, on the basis of which recovery was claimed, was

post-dated, for repayment of loan granted by the respondent / plaintiff to the appellant / defendant two months prior thereto;

- (ii) thus, the loan must have been granted on 17th October, 2001;
- (iii) the suit, from which this appeal arises, instituted on 16th December, 2004 was filed beyond the period of three years from the date on which loan was granted and was barred by time.

15. I have enquired from the counsel for the appellant / defendant / judgment debtor that even if the aforesaid were to be accepted, where is the limitation of three years, which is being applied, provided for.

16. The counsel for the appellant / defendant / judgment debtor states that “it is general knowledge that the period of limitation for seeking recovery of money is three years”. The counsel has neither drawn attention to any provision of the Schedule to the Limitation Act nor to any judgment.

17. The aforesaid arguments are arguments on a layman’s perception of the law of limitation. Before applying the period of three years, the date on which the same commences to run is also to be understood and for which, detailed statutory provisions are made.

18. I may in this context also notice that, no defence in the written statement of the suit claim being barred by time was taken, no issue of limitation was claimed, no evidence in this respect led and there is no finding of the Suit Court on the aspect of limitation.

19. For this reason also, no substantial questions of law qua limitation, even if any, can be said to be arising in this second appeal.

20. Else, no other substantial question of law is found to arise.

21. No other argument is urged.

22. I am thus satisfied that even on merits, the appellant has no case for having the Second Appeal entertained.

23. Dismissed.

24. No costs.

25. Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JULY 25, 2018

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