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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 29th August, 2018*

+ RFA(OS) 62/2018

NARENDER KUMAR GUPTA

..... Appellant

Through: Mr Sanjay Mishra, Adv

versus

ANITA GUPTA & ORS

..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No. 34978/2018 (exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

CM No. 34976/2018 (delay in filing)

1. Challenge in this appeal is to the preliminary decree passed by a learned Single Judge of this court dated 12.11.2014. Along with the appeal an application being CM No. 34976/2018 has been filed under Section 5 of the Limitation Act seeking condonation of delay of 1513 days in filing the appeal. Learned counsel for the appellant submits that the delay has occurred on account of bona-fide reasons and not on account of any carelessness or inaction on the part of the appellant. Learned counsel

contends that the appellant is suffering from Veri Cose Veins and has been undergoing treatment since the year 2005, has remained bed ridden and has been taking continuous treatment from Hindu Rao Hospital, Lok Nayak Hospital, AIIMS, Dr. Ram Manohar Lohiya Hospital, Sir Ganga Ram Hospital, Ayurvedic and Unani Tibbia College Hospital and Aruna Asaf Ali Hospital. Reliance is placed on prescriptions of various hospitals.

2. We have heard the learned counsel for the appellant and carefully examined the application seeking condonation of delay and the documents annexed with the application.

3. We find that the prescriptions and copies of investigations, some of which pertain to year 2018, the discharge summary from Sir Ganga Ram Hospital pertains to 04.03.2018, the diagnosis with regard to Veri Cose Veins is dated 03.01.2017, the prescription from Harnam Singh Charitable Medical Centre pertains to 04.01.2017, the prescription from Aruna Asaf Ali Hospital is dated 07.03.2017, the prescription from AIIMS is dated 18.06.2016, the prescription from Dr. Ram Manohar Lohiya Hospital is dated 29.06.2016, the prescription from Malhotra Medical Centre is dated 16.09.2014. None of the prescriptions or discharge summaries show that the appellant has been either bed ridden for a long period of time or was in any way handicapped in performing his day to day activities. Learned counsel for the appellant also urged that the question of law is involved.

4. The Supreme Court of India has culled out various factors which are to be considered while dealing with an application seeking condonation of delay, in the case of ***“Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and Ors.”*** Repored in (2014) 2 SCC (LS).

Paragraph 15 is produced herein below wherein it has been observed as under:-

“From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be

attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

5. No doubt while considering an application under Section 5 of the Limitation Act, the approach of the court should be liberal, pragmatic and justice oriented, however, the courts must also keep in mind that delay which is deliberate or on account of gross negligence on the part of a counsel or a party or an application which lacks bona fide should not be entertained. The present case is not one of an illiterate or poor litigant.

6. On account of the fact that there is gross unexplained delay and keeping in view the law laid down by the Apex Court, we find no ground to condone the delay. The application is dismissed.

7. Resultantly, the appeal and CM No. 34977/2018 are also dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 29, 2018
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