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

+ CRL.M.C. 5461/2018

MANVINDER SINGH & ANR Petitioners

Through: Mr. Saurabh Kansal, Advocate

versus

HARPREET KAUR Respondent

Through: Counsel (name not given)

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **29.10.2018**

CRL.M.A. 35083/2018 (for exemption)

Allowed, subject to all just exceptions. Application stands disposed of.

CRL.M.C. 5461/2018 & CRL.M.A. 35082/2018 (for stay)

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 for setting aside/quashing the impugned order dated 18.9.2018 passed by Ms. Smita Garg, ASJ West, Tis Hazari Court, Delhi in Criminal Appeal No.291/2017.

2. Issue notice. Notice is accepted by learned counsel for the respondent present in Court.

3. Learned counsel for both the parties addressed the arguments.

4. Learned counsel for the petitioners submitted that the impugned order passed by the Court is without jurisdiction and against the facts and law. The present petition has been filed by the petitioners against the

impugned order passed by the learned ASJ who had condoned the delay of 160 days in filing the appeal by the respondent herein, ignoring the fact that all this while, the respondent was appearing before the Court and had not supported the averments in any manner and also that the order dated 5.5.2017 passed by the learned Metropolitan Magistrate was already under review before the learned Metropolitan Magistrate on an application for review of the order filed by the petitioners well-in-time. The learned ASJ ignored the fact that the time-barred appeal could not be heard over the timely review filed by the petitioners.

5. The learned counsel for the petitioners also submitted that the application is also liable to be dismissed as no sufficient cause has been submitted for condoning delay in filing the appeal by the respondent.

6. The order demonstrates that the delay in filing of the appeal was mainly due to lapse on the part of the previous counsel and lack of knowledge in respect of legal remedy available to the appellant (respondent herein). It was recorded in the impugned order that since the appellant was a layman, she could not be expected to be conversant with the provisions of law and procedure. It is a settled law that while dealing with an application for condonation of delay, liberal approach should be adopted by the Court to advance the ends of justice and matter ought to be decided on merits. The appellant was burdened with costs of Rs.3,000/- to be paid by her to the respondents (petitioners herein).

7. I do not find any force in the submission of the learned counsel for

the petitioners that in view of the pendency of the review application, the Appellate Court could not condone the delay or dispose of any such application. The review application of the petitioners has no bearing or connection with the disposal of the application for condonation of delay. The review application as well as appeal are required to be decided on their own merits, as per law.

8. In view of the aforesaid facts and circumstances, the discussions and the law in this regard, it is clear that the respondent, being a layman had taken all steps and had engaged a counsel, was not aware about the procedure and there was lack of legal knowledge in respect of the remedy available, hence, she could not file the appeal in time. This Court is satisfied that sufficient cause has been submitted by the respondent for condonation of delay in not filing the appeal within time.

9. In view of above position, I do not find any flaw or infirmity in the impugned order. However, the petitioners are granted liberty to raise all the grounds available to them as per law, before the concerned court of learned Metropolitan Magistrate and the Appellate Court.

10. The petition is dismissed. Pending application is also dismissed.

CHANDER SHEKHAR, J

OCTOBER 29, 2018

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