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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 167/2018

OM PRAKASH GROVER & ORS

..... Appellants

Through: Mr.Vipin Singhania, Advocate

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Mr.Parvinder Chauhan, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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11.12.2018

In terms of proceedings dated 19.11.2018 in view of the submission having been made on behalf of the appellant to submit the additional affidavit in support of the contention that the appellant was unwell during the period after the date of the decree, the affidavit of the appellant No.4, *namely*, Nand Kishore Grover S/o Lekh Ram dated 10.12.2018 has been submitted on record stating therein that the said appellant No.4 has been a patient of *insomnia* for the last about 15 years and has been in continuous treatment for the same after its diagnosis in 2007 though the signs appeared in the year 2003/2004 and the medical prescriptions along with the diagnosis reports (dated 11.11.2003, 24.01.2004, 24.02.2004, 12.04.2004, 31.05.2004, 02.07.2004, 22.09.2004, 11.10.2004, 21.10.2004, 24.11.2004, 19.04.2006, 16.06.2006, 30.04.2007, 12.04.2016, 13.03.2017,

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27.03.2017, 28.3.2017, 29.3.2017, 3.4.2017, 16.04.2018, 21.04.2018 and 29.05.2018 have been submitted and that these are some of the documents that the appellant No.4 has been able to locate and may be in possession of more documents and that the documents filed along with the present affidavit may indicate that the deponent has been continuously suffering from this disorder. It has been further submitted through the affidavit that the disorder happens to be related to the nervous system which requires constant treatment, care and medication.

Inter alia appellant No.4 through this affidavit states that after he was put on medication after diagnosis in 2007 the same helped him control the disorder for some time till March, 2016 when his condition got aggravated and the aggravation “as the deponent understands, that is the appellant No.4 in the instant case, was due to diminishing tolerance to medicines he was being treated to and the deponent was thus subjected to a second round of diagnosis & treatment which was continuing till date”. Along with the affidavit the prescriptions have been submitted in support of the said contention.

The appellants No. 1 to 4 vide the present appeal assail the impugned judgment dated 2.8.2018 of the learned Additional District Judge-07 (Central) in RC No. 26/2017 vide which the application of the appellants under Section 5 and 14 of the Limitation Act, 1963 filed on 30.10.2017 in RCA No. 26/2017 was declined and as a consequence the RCA No.26/17 vide which the appellant had assailed

the impugned judgment dated 12.10.2012 and 30.1.2016 were dismissed as being not within time with it having been observed vide the impugned judgment to the effect that the conduct of the appellants in that case showed dilatory tactics, want of *bona fides*, deliberate inaction and negligence and no cause whatsoever much less sufficient cause had been shown in the instant case for the condonation of delay as submitted.

In view of the submissions that had been made on the date 19.11.2018, in view of the reasons detailed in the application under Section 5 & 14 of the Limitation Act, 1963 that had been filed by the appellants No. 1 to 4 through appellant No.4 through stated attorney, in whose favour the special power of attorney is indicated to have been executed on 31.5.2011 that the submission having been made in para 3 of the said application that the appellants No. 1, 2 and 3 had executed Special Power of Attorney in favour of appellant No.4 for the purpose of filing an appeal in the First Appellate Court and being a senior citizen had been suffering from illness of insomnia for last 13 years and still convalescent, time had been granted to the appellant to submit the additional affidavit qua the contention that had been raised on behalf of the appellant No. 4 in relation to his ailments.

On behalf of the respondent learned counsel for the respondent present on advance notice has drawn the attention of this Court, to the submissions made in the paragraph 8 of the application disposed of vide the impugned judgment of the first appellate Court which reads to the effect:

“8. That during the intervening period from 30.01.2016 to till date, the appellant No.4 kept on pursuing the matter with the office of Chief Minister of Delhi and other offices/authorities for the redressal of his grievances.”,

indicating thereby that from the period 30.1.2016 onwards till the date of the said application i.e. 30.1.2017 the appellant No.4 kept on pursuing the matter with the office of the Hon’ble Chief Minister of Delhi and other offices/ authorities for the redressal of his grievances and it is submitted on behalf of the respondent that this is the actual ground for not filing the appeal within the stipulated time.

Significantly, along with the said application that had been filed before the First Appellate Court as annexure P-14 thereto, is a copy of a letter dated 21.10.2016 of the appellant No.4 as attorney of the appellants No. 1, 2 and 3 herein to the office of the Hon’ble Chief Minister of Delhi mentioning it to be the 9th reminder vide reference No. DD/(P)/DUSIB/2016/D-2127 dated 23.9.2016 received on 5.10.2016 seeking rectification of an illegal order passed on 5.4.2000 by the Deputy Commissioner. Also annexed therewith is the 15th reminder of the appellant No.4 dated 14.12.2016 which is also to the Hon’ble Chief Minister, Delhi seeking redressal of his grievance. The said documents which have been filed by the appellants with the application before the First Appellate Court itself negate the contention of the appellants that due to insomnia that the appellant No.4 was suffering from, which he may have been suffering from, the

appellants were prevented from seeking redressal in accordance with law and thus resulted into a delay of 1767 days in filing the appeal before the First Appellate Court which the learned First Appellate Court has taken into account only as being a period of 559 days' delay in filing the appeal from the period 30.1.2016 onwards.

Apparently there is no infirmity in the impugned judgment of the First Appellate Court whereby it has been observed to the effect that there has been inaction and negligence and that no sufficient cause has been brought forth by the appellants herein for condoning the delay in institution of the First Appeal before the First Appellate Court. The prayer thus seeking condonation of delay is declined and consequently the RSA No.167/2018 is also declined.

ANU MALHOTRA, J

DECEMBER 11, 2018/sv