

\$~21

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

%

Date of Judgment: 30th October, 2018

+ RFA(OS) 2/2018

VINOD CHOPRA

..... Appellant

Through: Mr.Manu Shanker Mishra,
Mr.Balwant Singh Billowria and
Mr.Parveen Kumar, Advocates with
appellant in person.

versus

VASUDEV CHOPRA & ANR.

..... Respondents

Through: Mr.Alok Kumar, Mr.Amit Kumar
Singh and Mr.Abhishek Paruthi,
Advocates for R-1 and R-2.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

C.M.44371/2018 (delay in filing rejoinder)

1. The present application has been filed by the appellant under Section 151 CPC seeking condonation of delay in filing rejoinder to the reply filed in C.M.1119/2018.
2. There is no opposition to the prayer made in the application. Accordingly, the delay of 40 days in filing the rejoinder is condoned.
3. The application stands disposed of.

C.M.1119/2018 (delay of 585 days in filing the appeal)

4. The present application has been filed by the appellant under Section 5 of the Limitation Act for condonation of 585 days delay in filing the present appeal. Learned counsel appearing for the appellant submits that

the delay was neither caused on account of any bonafide reasons nor on account of negligence. It is submitted that the appellant/applicant is a senior citizen being 68 years of age, is suffering from chronic rheumatoid osteoarthritis and both his knees are dislocated and he is also suffering from financial crisis due to which he was forced to contact the legal cell of the High Court of Delhi in the month of December, 2016, but his request for providing legal aid was not acceded to. For this reason, the appellant could not file the appeal within the period of limitation.

5. Reply to this application has been filed. It is submitted by Mr.Alok Kumar, learned counsel appearing for the respondent that the present application is not *bonafide*; it lacks material particulars and devoid of sufficient grounds for seeking condonation of delay. Counsel further submits that the appellant has concealed material facts from this Court. It is contended that the suit was dismissed by an order dated 22.03.2016 whereas the certified copy of the same was applied only in the month of July, 2016. It is submitted that no sufficient reasons have been given for the delay in applying of certified copies. It is contended that the ground pertaining to financial crises is false as the appellant had entered into a sale transaction with respect to his immovable property bearing no. G-19/10-A (First Floor) situated at Rajouri Garden, New Delhi, which was sold by means of sale deed dated 08.08.2016 registered with the sub-registrar SR II, Basai Darapur vide registration No.7666 in Book No.1 Vol.No.22843 at pages 1 to 10 dated 11.08.2016 for a sum of Rs.24,50,000/- . Counsel submits that the Sale Deed does not reflect the correct sale price and the property was sold at a higher price. It is

submitted that even after receipt of this payment, the appeal was filed in the month of December, 2017 and for which there is no explanation.

6. Counsel for the appellant explains that the fact of selling immoveable property would, in fact, support his plea that that he was suffering from financial crises. Moreover, it is submitted that out of the sale price received the applicant/appellant made payment to Karvy Financial Services in the sum of Rs.21,49,000/-. Learned counsel for the appellant places reliance on the judgment rendered by the Apex Court in *State (NCT of Delhi) vs. Ahmed Jaan* reported in (2008) 14 SCC 582, more particularly, para 9 of the judgment, which has been reproduced below:

9. What constitutes sufficient cause cannot be laid down by hard and fast rules. In *New India Insurance Co. Ltd. v. Shanti Misra* (1975) (2) SCC 840) this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In *Brij Indar Singh v. Kanshi Ram* (ILR (1918) 45 Cal 94 (PC) it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain v. Kuntal Kumari* (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

7. Mr.Alok Kumar, counsel for the respondent submits that unless the application seeking condonation of delay is bonafide and material facts are provided, the delay cannot be condoned. In support his submission, he relies on the decision in the case of *Brijesh Kumar & Ors. v. State*

of **Haryana & Ors.**, reported at AIR 2014 SC 1612, wherein the Apex Court has held as under:

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In State of Karnataka & Ors. v. S.M. Kotrayya & Ors., (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in Jagdish Lal & Ors. v. State of Haryana & Ors., AIR 1997 SC 2366, observing as under:—

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

8. We have heard learned counsel for the parties.
9. Paragraphs 4 and 5 of the present application seeking condonation of delay reads as under:

“4. That the appellant/plaintiff is 68 yrs old patient suffering from chronic rheumatoid osteoarthritis and both knees of appellant/plaintiff are dislocated and also suffering from financial crisis. Thereafter appellant/plaintiff due to financial crises contacted the legal aid cell of Hon’ble Delhi High Court in the month of December 2016 but after discussions, the said legal cell did not accept the request of the appellant/plaintiff and not provided any legal assistance. Due to the above stated reasons the appellant/plaintiff was not in condition to pursue the appeal in present case.

5. That in the month of November 2017 the appellant/plaintiff came in contact with the present counsel through his Guruji and pursued the present appeal.”

10. Reading of the application would show that the application is vague and lacks material particulars. Besides mentioning that the appellant is suffering from rheumatoid osteoarthritis, there is nothing on record to show that on account of this ailment during the entire period of 585 days, the appellant was bed ridden and was not in a position to engage a counsel. On the contrary, the appellant/applicant has explained that he had approached the office of Legal Aid Cell of Delhi High Court in the

month of December, 2016 but no legal aid was provided. It is also admitted that the appellant had taken necessary steps to sell the property as has been described in the foregoing para 5. Irrespective of the illness, if the appellant was capable of visiting the office of sub-registrar, the illness cannot be such that prevented him from engaging a counsel and filing appeal. As far as plea of financial crises is concerned, the property was sold in the year 2016 and the payment was received. In spite of the same, the appellant has not given any reason for filing the appeal as late as in December, 2017. Having regard to the grounds so raised and applying the law to the facts of the present case, we are not satisfied that the appellant was prevented from sufficient cause in approaching this Court for filing appeal.

11. Accordingly, the application is dismissed.

RFA(OS) 2/2018

12. Since the application seeking condonation of delay has been dismissed, the appeal is also dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J

OCTOBER 30, 2018

rb