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

+ W.P.(C) 2250/2019 & C.M. No. 10539/2019

**RAJESH KUMAR GARG**

..... Petitioner

Through: Mr. Vipin Dilwari, adv with petitioner  
in person.

versus

**DELHI STATE CO-OPERATIVE BANK LTD & ANR**

..... Respondent

Through: Mr. Akshay Bhardwaj with Mr.  
Anupam, Adv. for R-1.  
Mr. Kaustubh Anshuraj, Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MS. JUSTICE REKHA PALLI**

**ORDER**  
**28.03.2019**

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The respondent No.1 – the contesting respondent, upon service has filed its counter-affidavit which is on record.

We have heard learned counsels and proceed to dispose of the matter.

The limited issue that arises for consideration, in the present petition is whether the Delhi Co-operative Tribunal, while dealing with the petitioner's Appeal No. 90/2017/DCT arising from Arbitration Case No. 1623/AR/ARB/2016-17 under Section 112 of the Delhi Co-operative Societies Act should have, in the facts and circumstances of the case, condoned the delay of 36 days in preferring the said appeal.

The Arbitral Award was rendered by the learned Arbitrator on

09.05.2017 under Section 71 of the Delhi Co-operative Societies Act. The petitioner preferred the appeal along with an application to seek condonation of delay on 05.08.2017. The justification given by the petitioner for the said delay was that he had engaged another counsel whose name has been disclosed in his application. The counsel had advised the petitioner to prefer an appeal. However, the counsel did not prepare the appeal. Thereafter, he contacted his present counsel, who advised him to obtain certified copies of the impugned award. He claimed that he had obtained the certified copies of the impugned award on 04.08.2017 whereafter the appeal was preferred.

The Tribunal rejected the application seeking condonation of delay, inter alia, by observing that though the petitioner had claimed that he had obtained the certified copies on 04.08.2017, the same had not been filed along with the appeal. The appeal could have been preferred within 60 days and was delayed by 36 days. The Tribunal also observed that it was for the petitioner to follow up the matter with his previous counsel and evidently he had failed to do so.

The right of appeal of a party is a valuable right and the same should normally be not denied on account of delay, particularly, where the delay is not gross and justification therefor is offered by the appellant. In the present case, the appellant has named the particular advocate whom he contacted and engaged to prefer the appeal. If the counsel had not preferred the appeal and that has led to delay, in our view, that was sufficient justification to condone the delay. To offset the prejudice that the respondent may suffer on account of delay in filing of the appeal, the Tribunal could have subjected the petitioner to terms. The Tribunal should not have rejected the appeal considering the fact that the delay was 36 days and could not be said to be

excessive.

For the aforesaid reasons, we set aside the impugned order and restore the petitioner's appeal. The delay in filing the said appeal is condoned subject to payment of costs of Rs.20,000/- to the respondent No.1. The parties shall appear before the Delhi Co-operative Tribunal on 11.04.2019.

Dasti.

The petition stands disposed of in the aforesaid terms.

**VIPIN SANGHI, J**

**REKHA PALLI, J**

**MARCH 28, 2019**

*N.Khanna*