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

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Date of Judgment: 12th March, 2019

+ **RFA(OS) 86/2018**

MONIKA HURT

..... Appellant

Through Mr. S. Mukerjee with Mr. Sudhankar
Dwivedi, Advocates

versus

KANWAL KISHORE MANCHANDA & ORS. Respondents

Through *Nemo*

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

**CM.APPL 51459/2018(delay) and RFA(OS) 86/2018 & CMs.APPL
51458/2018 & 4699/2019**

1. This is an application filed under Section 5 of the Limitation Act seeking condonation of 4569 days delay in filing the present appeal. Since the application seeking grounds of delay is short, we reproduce the same as below:

“1. That the Appellant is an overseas citizen of India holding an OCI Card No.A1218555 and permanently settled in Australia.

2. *The Appellant was a student almost till her marriage at the tender age of 21, in 1994, and that she went away to Australia, and has been settled there for almost 25 years, has visited India only by way of fleeting short visits, just about 2/3 times in the entire period from 1994 till date. She is also involved with the ISKON movement, and therefore, even out of the very short visits of few days, most of the days get*

devoted to visiting Mathura/Vridavan or other Shri Krishna Holy Places.

3. *That, the Appellant has never been served with the summons of the suit and otherwise also had no knowledge about the pendency of the suit or the orders passed therein till, she received the compilation of papers from her brother Gagan, during her visit to India between 14.09.2018 to 25.10.2018, and in fact till she obtained legal advice on the matter.*
4. *That, the Appellant came to know about the above said Suit No.687 or(sic of) 1993 and the Orders passed therein, on or about 23.11.2018, when she received legal advice from her counsel regarding further legal steps to be taken in relation to the impugned Will dated 23.02.1990, which had been handed over to her by her brother Sh Gagan Khanna along with other papers during her visit to India between 14.09.2018 to 25.10.2018.*
5. *That it is in the interest of justice that the Appellant be granted the condonation of delay for the period since final decree dated 27.04.2006(12 years), upto the date of the filing of the present appeal.*

PRAYER

It is prayed that it is in the interest of justice that the Appellant be granted the condonation of delay for the period since final decree dated 27.04.2006(12 years), up to the date of the filing of the present Appeal.”

2. Reading of the application would show that the appellant claims that she was not served with a copy of the summons in the suit and she had no knowledge about the pendency of the suit. It is also averred that she learnt about the same when she received a compilation of papers from her brother Shri Gagan during her visit between 14.09.2018 to 25.10.2018 and thereafter she sought legal advice.

3. Mr. Mukerjee, learned counsel appearing for the appellant has laboured hard to contend that since the appellant has been permanently residing in Australia for more than 25 years and she has visited India only two or three times, she was not aware of the pendency of the suit. The learned counsel has relied upon a decision in the case of ***Manoharan v. Sivarajan & Ors.***, reported at **(2014) 4 SCC 163** to contend that it is not length of delay which matters but the explanation for the delay. He further submits that on account of technicalities, a meritorious matter should not be thrown out. The learned counsel has also relied upon the judgment in the case of ***Nand Kishore v. State of Punjab***, reported at **1995 SCC(6) 614**, wherein delay of 29 years was condoned.
4. We have heard the learned counsel for the appellant. Although, there is no quarrel to the proposition of law which has been urged by Mr. Mukerjee. While deciding an application seeking condonation of delay of an application under Section 5 of the Limitation Act, the Court must record its satisfaction that the delay was on account of sufficient cause.
5. In the case of ***Brijesh Kumar & Ors. v. State of Haryana & Ors.***, reported at **AIR 2014 SC 1612**, 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.”

6. The present application does not repose confidence that the delay in filing the appeal was for sufficient cause. The application lacks material particulars. We are unable to accept that it is only in the year 2018 that the brother of the appellant who is also her attorney had provided papers to her. The application does not state as to when the

attorney who happens to be her real brother gained knowledge and from where he acquired the papers.

7. We do not find any merit in the application seeking condonation of 4569 days delay in filing the present appeal. Accordingly, the application is dismissed. Resultantly, the appeal alongwith all pending applications stand dismissed.
8. At this stage, Mr. Mukerjee, learned counsel for the appellant submits that he would seek such other remedy which may be available to him in accordance with law.

G.S.SISTANI, J.

JYOTI SINGH, J.

MARCH 12, 2019

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