

RSA- 4816 of 2019 (O&M)
Date of Decision: 21.1.2020

Uday Shrikant Ghatge and others

---Appellants

versus

Rajinder Sharma

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Kumar, Advocate
for the appellants**

Rekha Mittal, J.

CM No. 484-C of 2020

Heard.

**Allowed as prayed for. Annexure A-1 is taken on record,
subject to just exceptions.**

Main case

Challenge in the present appeal has been directed against order dated 18.9.2019 passed by the Additional District Judge, Gurugram whereby application for condonation of delay in filing the appeal i.e. CA No. 22 dated 21.3.2018, was dismissed. Operative part of para 12 of the order, reads as follows:-

“In view of the foregoing discussion, the applicants have failed to show that they had sufficient cause for condonation of delay in filing the present appeal. Resultantly, present application seeking condonation of delay moved on behalf of the applicants stands dismissed.”

On the very same day, the Court recorded zimni order, reads thus:-

“Order pronounced. Vide separate order of even date, present application seeking condonation of delay moved on behalf of the applicants has been dismissed. Consequently, the appeal against the ex parte judgment and decree dated 3.4.2015 also stands dismissed. However, there shall be no order as to costs. Memo of costs be prepared accordingly. Trial court record along with a copy of this order be sent back to the concerned court through its Presiding Officer forthwith. Appeal file be consigned to the record room after due compliance.”

Perusal of the orders aforesaid leaves no manner of doubt that appellate court dismissed the application for condonation of delay in filing the appeal and did not touch merits of the case. As a consequence of dismissal of application for condonation of delay, the appeal was also ordered to be dismissed. It can be construed that the same was dismissed being barred by limitation. The mere fact that court has prepared memo of costs would not give the appellants a right to file regular second appeal against order dismissing application for condonation of delay. The appellate court never prepared a decree against which second appeal can be filed by the appellants. In the given circumstance, the appeal is dismissed being not maintainable but without prejudice to right of the appellants to avail appropriate remedy, in accordance with law.

Court fee paid by the appellants is ordered to be refunded.

(Rekha Mittal)
Judge

21.1.2020

PARAMJIT Whether speaking/reasoned : Yes
Whether reportable : Yes/No