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

+ **RFA(OS) 8/2020 & C.M. APPL. 3447-3448/2020**

SHIV KUMAR TYAGI & ANR Appellants

Through: Ms. Anupama Sharma, Advocate

versus

RAGHU NATH SAHAI ANAND & ORS

..... Respondents

Through: None

+ **RFA(OS) 9/2020 & C.M. APPL. 3452-54/2020**

SHIV KUMAR TYAGI & ORS Appellants

Through: Ms. Anupama Sharma, Advocate

versus

RAGHUNATH SAHAI ANAND & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **28.01.2020**

C.M. APPL.3446/2020 (under Section 5 of the Limitation Act, for condonation of delay of 1433 days in filing the RFA(OS) 8/2020) in CS (OS) 1430/2012 &

C.M. APPL.3451/2020 (under Section 5 of the Limitation Act, for condonation of delay of 1279 days in filing the RFA(OS) 9/2020) in CS (OS) 1969/2003

1. The captioned appeals are directed against the common judgment and decree dated 15.01.2016, passed by the learned Single Judge in CS(OS) 1430/2012 and CS(OS)1969/2003. The explanation sought to be offered by

RFA's (OS) 8/2020 & 9/2020

Page 1 of 4

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the appellant/defendant No. 13 in para 3 of the condonation of delay applications is as follows:-

"3. That the undersigned has been approached for filing the above said Regular First Appeal. That after going through the entire case records it has transpired that few of the documents required to be filed are not available with the Appellant. However the same was necessary for proper adjudication of the instant matter. It is also relevant to mention here that few documents annexed herewith as an annexure are originally in Hindi which is required to be translated in English. Therefore in the above circumstances some delay has occurred. The delay so caused was inadvertent and unintentional. As soon as the original document has been received by the counsel undersigned, matter has been drafted and document got typed, thus some delay occurred for the correct appreciation of the documents and filing of the present Regular First Appeal. Under such circumstances, it has caused some delay in filing the present Regular First Appeal."

2. We may note that in the first set of the appeal paper book filed in RFA (OS) 9/2020, there is blank in para 4 and the prayer clause as to the number of days delay, though in the second set of the appeal paper book, the number of days has been mentioned as 1279 days. In the second appeal filed i.e. RFA (OS) No. 8/2020, there is a delay of 1433 days in filing the appeal.

3. On a perusal of the averments made in para 3 above, the only explanation offered by the appellant/Defendant No.13 is that a few documents from the suit records were not available and the same were necessary for a proper adjudication of the appeal. Further, it has been stated that a few documents annexed with the appeal were originally in vernacular and were

required to be translated into English due to which the delay had occurred. Claiming that the delay caused is inadvertent and unintentional, condonation has been prayed for.

4. To say the least, the explanation sought to be offered for seeking condonation of delay for such a prolonged period of 3 ½ to 4 years is extremely ambiguous and sketchy and does not deserve to be taken into consideration. The appellant has neither shown just, nor sufficient cause to this court for condoning an inordinate delay of 1433 and 1279 days, respectively in filing the accompanying appeals.

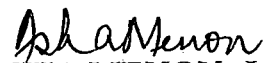
5. Further, a perusal of the appeal paper books reveals that learned counsel for the appellant has only filed a true copy of the impugned judgment in RFA (OS) 8/2020. She concedes that a certified copy of the impugned judgment has not been applied for. As for RFA (OS) 9/2020, a certified copy was applied for on 20.01.2016 and it was ready and delivered on 25.01.2016. In other words, while the appellant has filed two separate appeals against a common judgment dated 15.01.2016, whereunder two suits i.e., CS (OS) 1430/2012 and CS(OS)1969/2003 have been decided by the learned Single Judge, for reasons best known to him, only one certified copy was applied for in CS (OS) 1969/2003 subject matter of RFA (OS) 9/2020, whereas no steps were taken to apply for a certified copy of the judgment and decree in CS (OS) 1430/2012, subject matter of RFA (OS) 8/2020. Even today learned counsel for the appellant admits that a certified copy of the judgment in CS (OS) 1430/2012, the subject matter of RFA (OS) 8/2020, has not been applied for.

4

6. Having regard to the lackadaisical approach of the appellant/Defendant No.13 and the complete absence of any plausible explanation for condoning a delay of 1433 days in filing RFA (OS) 08/2020 and a delay of 1279 days in filing RFA (OS) 9/2020, we have no option but to dismiss both the applications.

7. Consequently, both the appeals, RFA (OS) 8/2020 and RFA (OS) 9/2020 are also dismissed along with the pending applications.


HIMA KOHLI, J


ASHA MENON, J

JANUARY 28, 2020
Sm/s