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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ RSA 28/2022, CM APPL. 13822/2022 (*Order XXXIX Rules 1 and 2 CPC*) and CM APPL. 13823/2022 (*exemption*)

BHAGWAN SINGH Appellant
Through Mr. Samson Honey, Adv.

Versus

DELHI DEVELOPMENT
AUTHORITY & ANR. Respondents
Through Mr. Sanjay Katyal, Standing
Counsel for DDA

CORAM:**HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGEMENT (ORAL)**

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22.03.2022

1. This second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns an order dated 10th February, 2022, passed by the learned Additional District Judge, Karkardooma Courts (“learned ADJ”), who has dismissed the first appeal of the appellant on the ground of delay. The impugned order reads thus:

“Appeal under Order XLI Rule 1 read with Section 96 of the CPC against the judgment dated 04.04.2019 passed by Ld. ASCJ, KKD Court, Delhi in Civil Suit No.9876/2016

JUDGMENT

1.) The subject matter of the present adjudication is the appeal under Order 41 Rule 1 read with Section 96 CPC against the impugned judgment dated 04.04.2019 passed by Ld. ASCJ, KKD Courts, Delhi in Civil Suit No.987p/2016. Vide the impugned order the Ld. Trial Court had dismissed the present suit. The appeal under consideration is also accompanied with an application dated 17.07.2019 seeking condonation of delay



in filing the appeal. In the said application it is prayed that the delay of 100 days be condoned.

2.) Arguments as addressed by both the appearing parties heard.

3.) In the application seeking condonation of delay the only ground as stated therein is that 'due to lack of resources the appellant could not avail legal advice and hence could not file the appeal within the prescribed period'.

4.) As per the 'Second Division' of the Schedule to the Limitation Act, 1963 [Entry 116 (b)] the prescribed period for filing of appeal is- '30 days' reckoned from the date of decree or order. In the given context the impugned order was passed as on 04.04.2019 where the appeal under consideration has filed as on 19.07.2019. This way there was delay of 87 days and not of 100 days as averred in application in hand.

5.) Now coming to the merits of the application in hand the only ground reflected therein is that of lack of resources to file the present appeal. As a matter of fact the suit had not been filed as an 'Indigent person'. Moreover, as per the averments made in the plaint itself the plaintiff/applicant/appellant has been in possession and has been running a Horticultural/ Agricultural Nursery in an area of approximately half an acre in the Geeta Colony area of East Delhi and it thus becomes incomprehensible as to how he was lacking resources for filing the appeal; more so when he has in no way and nowhere shown any such financial incapacity/handicap so as to lean towards him.

6.) Thus, as a matter of fact there was no ground at all for the delay in filing the appeal and there is no explanation at all (leave aside the day to day explanation for each day of delay) for the delay of approximately 3 months in filing the present appeal.

7.) Accordingly, the application seeking condonation of delay is found and held to be devoid of merits/grounds and is hereby disposed of as dismissed. ***As the application seeking condonation of delay has been dismissed, the appeal in hand is bound to follow on the footsteps of the same. Hence, the Appeal under consideration also stands disposed as dismissed***



being time barred. Decree-sheet be prepared accordingly and consigned to record room.

**Announced in the open
court on 10th February, 2022.**

Sd.
(Raghubir Singh)
Additional District Judge-01
(East)/KKD/Delhi”

2. The application for condonation of delay, preferred by the appellant before the learned ADJ, reads as under:

**“IN THE COURT OF HON’BLE DISTRICT JUDGE
(EAST) KARKARDOOMA COURT DELHI**

I.A. No. _____ 2019

IN

Civil Appeal No. _ /2019

(Arising from the judgment dated 04.04.2019 passed by Ld. Additional Senior Civil Judge, Karkardooma Court, Delhi in Civil Suit No. 9876/2016)

In the matter of:

Bhagwan Singh

... Appellant

Vs.

Delhi Development Authority and others

.. Respondents

And, in the matter of:

**APPLICATION UNDER ORDER XLI RULE 3A, SUB-
RULE (1) AND (2) OF THE CPC SEEKING
CONDONATION OF DELAY IN FILING THE APPEAL
AGAINST THE MPUGNED ORDER DATED 04.04.2019
PASSED BY LD. ADDITIONAL SENIOR CIVIL
JUDGE, KARKARDOOMA COURT, DELHI IN CIVIL
SUIT NO. 9876/2016**

The appellant above named

MOST RESPECTFULLY SHOWETH:



1. The appellant above named has filed the accompanying appeal being aggrieved from the judgment dated 04.04.2019 passed by Ld. Additional Senior Civil Judge, Karkardooma Court, Delhi (hereinafter. referred to as "Ld. Trial Court") in Civil Suit No. 9876/2016 whereby the said suit has been dismissed under Order XII rule 6 and Order: XV rule 1 of the CPC. The contents of the said appeal may kindly be read as part and parcel of this application also as the same are not repeated herein for the sake of brevity.
2. That the certified copy of the impugned judgment was prepared and released on 26.04.2019 i.e. only after 3 days of its apply.
3. That thereafter due to lack of resources, the appellant could not avail legal advice and could file the appeal within limitation period. The limitation to prefer the instant appeal has since expired.
4. That the appellant arranged resources and approached counsel undersigned in the first week of July requesting him to prepare and file an appeal against the impugned order.
5. That because of heavy works, the appeal could not be prepared by the counsel immediately and the same is being prepared and being filed at this stage after a delay of 100 days has occurred.
6. That said delay in filing of the captioned appeal is neither intentional nor deliberate but because of bonafide reasons as submitted hereinabove. Great hardship and prejudice would be caused to the appellant, if the above mentioned delay in filing of the appeal is not condoned by this Hon'ble Court and the matter is not decided on its merits. On the other hand, no prejudice would be caused to respondents, if the delay in filing of the appeal is condoned and the appeal above mentioned is taken up and decided by this Hon'ble Court on its merits.

PRAYER

Therefore, this 'Hon'ble Court may graciously be pleased to:



(i) Condone the delay of 100 days in filing of the captioned appeal against the judgment dated 04.04.2019 passed by Ld. Additional Senior Civil Judge, Karkardooma Court, Delhi in Civil Suit No. 9876/ and

(ii) Pass any other order that is deemed fit and proper in the facts and circumstances of the case.

It is prayed accordingly.

Filed by
Sd.
Appellant
Through
Counsel for the appellant

Delhi
Dated 17/7/2019”

3. The application cites, as the only ground for seeking condonation of delay, “lack of resources”, which prevented the appellant from obtaining legal advice and filing the appeal within limitation and “heavy works”, as a result of which the appeal could not be prepared by the counsel within time.

4. The application does not disclose the resources of the appellant or explain as to why they were insufficient to enable the appellant to file the appeal within time. Similarly, “heavy works” could hardly be said to be a sufficient ground to seek condonation of delay.

5. The learned ADJ has observed, in the impugned order, that the appeal was not filed by the appellant as an indigent person and that, even as per the averments in the plaint, the appellant was running a



horticultural/agricultural nursery, which belied the submission that he was lacking in resources to obtain legal advice and file an appeal.

6. In this second appeal, the appellant has sought to advance an entirely new ground, involving the illness of his mother, who subsequently, expired on 26th March, 2021. The impugned order of the learned trial court, which was impugned before the learned ADJ was passed on 4th April, 2019. The limitation for filing the appeal, thereagainst, expired on 4th May, 2019. The appeal came to be filed on 19th July, 2019.

7. As per the averments in the present appeal, the appellant's mother expired on 26th March, 2021, nearly two years after the date for filing the appeal before the First Appellate Court. No material to indicate that the appellant was unable to file the appeal within time in April, 2019, as he was involved in tending to his ailing mother, has been placed on record.

8. Though the delay in filing the appeal before the First Appellate Court was not gross by any standard, this Court is exercising jurisdiction under Section 100 of the CPC. Section 100 of the CPC permits the Court to interfere only if there is a substantial question of law, which arises from the orders of the courts below. Absence the existence of any SQL, the Section 100 Court cannot interfere with the order under challenge solely on the ground of sympathy.

9. In the aforesaid facts and in exercise of the jurisdiction of the



Court under Section 100 of the CPC, the Court cannot revisit the grounds taken by the appellant for condonation of delay, or be more empathetic, to the appellant, than the courts below.

10. I am constrained, therefore, to dismiss the present appeal *in limine* as no substantial question of law arises therefrom. All miscellaneous applications are also disposed of.

MARCH 22, 2022
r.bararia

C.HARI SHANKAR, J