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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:- 28.07.2022*

+ RFA 193/2022 & CM APPL. 33091/2022 (condonation of delay of 35 days in filing reply by R-1(ii))

RAMESH NATH SHARMA (DECEASED)THROUGH LRS

..... Appellant

Through: Mr.T.N.Singh & Mr.Vikas Kumar
Singh, Advs.

versus

RAJ NATH SHARMA(DECEASED)THROUGH LRS AND ORS

..... Respondents

Through: Mr.Sorabh Dahiya, Adv. for R-1 (i) &
(iii)

Ms.Jagrati Singh, Adv. for R-1 (ii)

Mr.Karan Malhotra, Adv. for R-2 to 9

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)****RFA 193/2022 & CM APPL. 21203/2022 (condonation of delay of 522 days).**

1. The present appeal seeks to assail the judgment and decree dated 31.07.2018 passed by the ADJ-02, Patiala House Courts, New Delhi in CS No.57150/2016. Vide the impugned judgment, the learned Trial Court has decreed the respondent/plaintiff's suit for partition in respect of the property bearing No. 21 Bazar lane, Bengali Market, New Delhi.

2. The appeal is accompanied by an application seeking condonation of delay of 522 days in filing the appeal. Learned counsel for the appellant submits that appeal could not be filed within the prescribed time as the appellants were not aware of the final decree being passed against them on



31.07.2018. He submits that it was on account of the appellants' mother being hospitalized between 2017 to 26.08.2019 when she unfortunately expired, they could not appear before the learned Trial Court during the said period and were therefore not aware of the final judgment being passed by the learned Trial Court. He further submits the erstwhile counsel of the appellants did not inform them regarding the passing of the judgment and therefore, prays that the delay of 522 days in filing of the appeal, which is bonafide, be condoned.

3. Per Contra, the application is vehemently opposed by the learned counsel for the respondents who submits that the appellants have not only been utterly negligent in filing the appeal but have even otherwise, failed to provide any plausible justification in not filing the appeal within the prescribed time. They further contend that even otherwise, the application is wholly vague and does not even set out as to when the appellants learnt about the passing of the impugned judgment. They therefore pray that the application be dismissed

4. Before dealing with the rival submissions of the parties, it would be appropriate to note *in extenso*, the contents of the application based on which the appellants are seeking condonation of delay. The same read as under:-

"1. That the appellants have filed this day above-mentioned in this Hon'ble Court under Section 96 CPC on various grounds, the contents whereof may be read as part and parcel of instant application as the same are not being reproduced for sake of brevity .

2. That there is delay of 522 days in filing the above-mentioned appeal in this Hon'ble Court. The delay has occurred unwillingly and beyond the control of the appellants



due to serious ailments and hospitalization of the mother of the appellants from year 2017 to August , 2019 as she died during treatment in Ram Manohar Lohia Hospital, New Delhi and thereafter due to COVID - 19. Photocopies of some of medical papers of the mother of the appellants showing her continuous treatment in Ram Manohar Lohia Hospital, New Delhi are annexed herewith. During that period the paramount concern of the appellants was to save precious life of their beloved mother and nothing else.

3. That the appellants on account of serious ailments and hospitalization of their mother Rani Sharma in Ram Manohar Lohia Hospital, New Delhi from year, 20 17 to August, 2019, were not appearing before the Trial Court since year, 2017 and also due to serious ailment of Kidney disease and chest pain etc. of their mother since year, 2017 and further their learned Counsel in the High Court also misguided them not to appear in the Trial Court as original records have been summoned by this Hon'ble Court and as such no proceedings will take place before the Trial Court .

4 . That the appellants came to know about the final decree passed by the Trial Court very recently and the appellants have suffered a great financial loss on twin basis namely in treatment of their mother and also du e to COVID- 19.

5. That the delay caused in filing the appeal have been occasioned due to the reason mentioned above and as such the delay has been neither deliberate nor intentional. If the delay in filing the said appeal is not condoned then the appellants shall suffer an irreparable los s and injury.

PRAYER

It is, therefore, Most Respectfully Prayed that this Hon'ble Court may graciously be pleased to :-

(a) Condone the delay of 522 days in filing the said appeal in filing the said appeal; and

(b) Pass such other or further order/ direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

5. A bare perusal of the aforesaid application shows that the averments



made by the appellants are extremely vague and do not, in any manner explain such an inordinate delay of 522 days in filing the appeal. The appellants have simply stated that they were not aware of passing of the impugned judgment without even mentioning as to when it learnt of passing of the impugned judgment and as to how. The appellants have urged that it was on account of the illness of their mother and thereafter the pandemic of Covid-19 that there was a delay in filing the appeal. Even as per the appellant's own showing that their mother expired in 2019 and the pandemic began in March, 2020, the impugned judgment was passed on 31.07.2018 and the appeal was filed only in March/April, 2022 and therefore this plea of the appellants regarding their mother's illness or the pandemic does not explain this inordinate delay of 522 days in filing the appeal, more so when the appellants were well aware that a preliminary decree for partition was passed on 22.10.2016 which decree was not stayed despite an appeal having been preferred by the appellants.

6. Undoubtedly, the Courts while dealing with applications for condonation of delay are expected to apply a liberal approach while considering sufficient cause for delay instead of adopting a hyper technical approach. This, however, cannot imply that such vague applications as filed by the appellants should be accepted. It may also be noted that despite opportunity, the appellants have not chosen to file any rejoinder to the detailed reply filed by the respondents opposing the application.

7. At this stage, a reference may also be made to the decision of the Supreme Court in *University of Delhi v. Union of India*, (2020) 13 SCC 745, wherein the Apex Court reiterated that a routine explanation would not be enough to condone the delay. The relevant part of the said decision reads as



under-

“23. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the courts based on the fact situation. In Katiji [LAO v. Katiji, (1987) 2 SCC 107] the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight of is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800%”

8. In the light of the aforesaid, this Court sees no reason to condone this inordinate delay in filing the appeal.
9. The application is, accordingly, dismissed.
10. Consequently, the appeal alongwith all other pending applications is dismissed.

(REKHA PALLI)
JUDGE

JULY 28, 2022

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