



\$~81 (Appellate Side)

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

+ **RSA 58/2022 & CM APPL. 25566/2022**

ANAMIKA

..... Appellant

Through: Mr. Krishan Paul, Adv. with
appellant in person

versus

RAM AVTAR

..... Respondent

Through: Mr. Maninder Jeet Singh and
Mr. Gagan Kumar Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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27.05.2022

1. The present appeal, under Section 100 of the Code of Civil Procedure, 1908 (CPC), assails the order dated 11th April, 2022, passed by the learned Additional District Judge (“the learned ADJ”) in RCA 21/22 (*Anamika v. Ram Avtar*) which, in turn, assailed the judgment dated 28th September, 2019, of the learned ASCJ-cum-JSCC-cum-GJ (“the learned Trial Court”) in CS 922/2018 (*Ram Avtar v. Anamika*).

2. The impugned appellate order dated 11th April, 2022 refuses to condone the delay, on the part of the appellant, in preferring the appeal and, accordingly, rejects the application for condonation of delay as well as the appeal itself.

3. The order of the learned Trial Court, against which RCA 21/22



was filed, was dated 28th September, 2019. RCA 21/22 came to be filed, thereagainst, only on 21st March 2022. The appellant sought to contend that she came to know of the order dated 28th September, 2019 only on 15th January, 2022 and, on that contention, sought condonation of delay in filing the appeal.

4. The learned ADJ has disbelieved this contention, on the basis of two documents placed on record by the respondent; the first being an application, under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 (“the DV Act”), filed by the appellant before the learned Metropolitan Magistrate, in which specific reference was made to the judgment and decree dated 28th September, 2019 passed by the learned Trial Court in CS 922/2018, and the second is an order dated 6th November, 2020 passed by the Executing Court in Execution 256/19, which sought execution of the order and decree dated 28th September, 2019 (*supra*) in CS 922/2018, in which, too, the appellant asserted her right to reside in the suit property.

5. The order dated 6th November, 2020, passed by the Learned Executing Court in 256/19 (***Ram Avtar v. Anamika***) has not been placed on record. However, learned Counsel for the respondent has handed over a copy of the order across the bar and it is seen that, in the said case, Mr. Karam Vir Singh, as Counsel for the appellant, asserted her right to reside in the suit property as the daughter-in-law of the respondent.

6. The application dated 30th October, 2019, filed by the appellant



under Section 23(2) of the DV Act is, however, on record, and para 3 of the said application reads thus:

“3. That the Ld. Civil Judge has passed the decree in civil suit no. 922/2018 against the applicant with the direction to vacate the property bearing no. C-1195, Sangam Vihar New Delhi- vide judgement dated 28.09.2019 the internet generate copy of order is annexed herewith.”

7. In view of the aforesaid documents, the learned ADJ has disbelieved the appellant's contention that she was unaware of the judgment and decree dated 28th September, 2019 till 15th January, 2022 and has, therefore, rejected her prayer for condonation of delay in filing RCA 21/22.

8. The only contention urged, by the learned Counsel for the appellant, in the second appeal, under Section 100 of the CPC, is that the respondent has filed only photocopies of the aforesaid application before the learned Metropolitan Magistrate in the proceedings instituted by her under the DV Act and of the order dated 6th November, 2020. He contends that the learned ADJ ought not to have relied on the said photocopies as grounds to reject the appellant's application for condonation of delay.

9. This cannot, clearly, constitute any ground for this Court to hold that any substantial question of law arises in the impugned order dated 11th April, 2022, as would justify interference by this Court in second appeal under Section 100 of the CPC.



10. I may note, here, that, in the present appeal, the following substantial question of law has been suggested by the appellant:

“Whether the Ld. Trial Court and the Ld. First Appellate Court could decide the suit or the first appeal out of merit and without considering the living rights of the Appellant in her matrimonial home, which provides by the D.V. Act, 2005 to her?”

11. Clearly, the aforesaid substantial question of law does not arise from the impugned order, which merely rejects the appellant’s application for condonation of delay, and does not make any observations on the merits of the disputes between the appellant and the respondent.

12. Nonetheless, in order to attempt at doing substantial justice, I queried, of learned Counsel for the appellant, as to whether she had, or had not in fact filed the aforesaid application dated 30th October, 2019, before the learned Metropolitan Magistrate in the proceedings under the DV Act instituted by her. He submits, on instructions from the appellant, who happens to be an M.A.B. Ed. degree holder, that she does not know whether she had filed the said application.

13. In such a situation, it is not possible for this Court to come to the aid of the appellant or to interfere with the decision of the learned ADJ in refusing to condone the delay in preferring RCA 21/22 against the order dated 28th September, 2019, more than 2½ years after the said order was passed.

14. The appeal, therefore, does not raise any substantial question of



law and does not, even otherwise, call for interference by this Court.
It is, accordingly, dismissed *in limine* with no orders as to costs.

15. Miscellaneous application is also disposed of.

C. HARI SHANKAR, J.

MAY 27, 2022
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