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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10th February, 2022

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RSA 137/2019 & CM APPL. 31205/2019

JATINDER PAL SINGH & ANR

..... Appellants

Through: Mr. Mehul Gupta, Advocate

versus

TEJINDER SINGH & ANR

..... Respondents

Through: Mr. Tamim Qadri, Advocate for R-1

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The impugned judgment dated 21st May, 2019 in **RCA No.50/17** titled ***Jatinder Pal Singh v. Tejinder Singh***, is under challenge before this Court by way of a second appeal wherein the first Appellate Court had refused to entertain the appeal on account of it being barred by delay. The Appellants-Plaintiffs (*hereinafter "Plaintiffs"*) had sought condonation of delay of 49 days in filing the first appeal, which was not acceded to by the Appellate Court.
3. The said first appeal was against the order of the Trial Court dated 2nd December, 2016 in **Suit No.59/2015** titled ***Sh. Jitender Pal Singh & Anr. v. Tejinder Singh & Anr.*** A brief background of the matter is that a suit for rendition of accounts and permanent injunction was filed by the Plaintiffs herein, against the Respondents-Defendants (*hereinafter "Defendants"*). In the said suit, an application under Order VII Rule 11 CPC was filed initially



by the Defendants. However, the said application was withdrawn as recorded in the order dated 3rd August, 2016. Thereafter, an application was filed for amendment of the written statement under Order VI Rule 17 CPC by counsel for Defendant No.1. On the said application, arguments were heard on 1st December, 2016 and the following order was passed:

*“Present:- Ld. Counsel Sh. Mehul Gupta for the plaintiff.
Ld. Counsel Sh. Tamim Qadir for the defendant no.2.*

An application for amendment/change in the amendment application has been filed by the Ld. Counsel for the defendant no. 2.

Perusal of the application shows that it was merely a typographical error that is sought to be rectified by the Ld. Counsel for the defendant no. 2.

Accordingly, the request is acceded to and the change in the title of the said application is allowed.

*Ld. Counsel for the plaintiff who is present in court also apprised about the change sought to be made.
Arguments heard on the application under order VI Rule 17 CPC.*

Put up for order on 02/12/2016 and thereafter for further proceedings, AD and framing of issues on 28/01/2017.”

4. Curiously, however, vide order dated 2nd December, 2016, the application under Order VII Rule 11 CPC, which was already withdrawn, was allowed by the Trial Court and the plaint was itself rejected. The said order reads as under:-

“Present: None

Vide separate order of even date, the application under Order VII Rule 11 CPC of the defendant no.1 stands



*allowed and the plaint is rejected.
File be consigned to Record Room.”*

XXX

*“14. In light of the discussion above, the plaint is rejected.
In arriving at the above said conclusion, the oral
submissions made by the parties have also been taken into
consideration.*

*15. Once the plaint is rejected under Order VII Rule 11
CPC, it would be an exercise in futility to pass any order
on the application under Order VI Rule 17 CPC as the
same has become infructuous.*

16. Plaint is rejected.”

5. The knowledge of this order dated 2nd December, 2016, is stated to have been acquired by the Plaintiffs on 28th January, 2017, which was the date on which issues were to be framed, as previously recorded on 1st December, 2016. It is on the said date i.e., on 28th January, 2017, that the Plaintiffs discovered that the plaint itself has been rejected. Accordingly, the appeal was presented before the Appellate Court on 17th/18th February, 2017. However, considering the fact that the order which was under appeal was of 2nd December, 2016, the Appellate Court has refused to condone the delay. Hence, this second appeal has been filed before this Court.

6. Mr. Gupta, ld. counsel appearing for the Plaintiffs, submits that the Plaintiffs could not have imagined that when the arguments were to be heard on the application under Order VI Rule 17 CPC, the plaint would be rejected under Order VII Rule 11 CPC instead. He submits that since the application under Order VII Rule 11 CPC was withdrawn earlier, the order dated 2nd December, 2016, was not in the notice of Plaintiffs. Hence, the delay in filing the first appeal. Immediately, upon acquiring knowledge of the said order on 28th January, 2017, the first appeal was presented within 30 days.



7. On the other hand, Mr. Qadri, Id. counsel for the Defendants, submits that the order dated 2nd December, 2016 records clearly in paragraph 6, the fact that submissions were heard under Order VII Rule 11 CPC while hearing the application under Order VI Rule 17 CPC, and therefore the Trial Court did not proceed incorrectly. The relevant portion of the said order is as under:

“6. Apart from arguments on the merits of application under Order VI Rule 17 CPC, the parties also made oral submissions regarding the present suit being hit by Order VII Rule 11 CPC. Counsel for the defendant no.1 stated that the plaint merits a rejection under Order VII Rule 11(d) CPC, wherein a suit which appears from the statement in the plaint to be barred by any law, has to be rejected. Counsel for the defendant submits that since the partnership firm in question was unregistered, the plaintiffs could not have filed a suit against the other surviving partner i.e. defendant no. 1. Counsel for the plaintiff has vehemently opposed the said contention and stated that bar of section 69 would not come into play as the partnership firm was dissolved and section 69 itself carves out an exception vis-a-vis suits for rendition of accounts and suits to enforce common law rights arising out of the partnership firm.”

8. Heard the counsels for the parties. Clearly, there seems to have been some misunderstanding in the manner in which the case proceeded before the Trial Court. Since the application under Order VII Rule 11 CPC was withdrawn by the Defendants, the Plaintiffs may have been under the impression that the application under Order VI Rule 17 CPC alone would be heard by the Court and orders on the same would be passed on 2nd December, 2016. Being under this impression, the Plaintiffs have again



checked on 28th January, 2017 and realized that the suit had been rejected. The first appeal then, has been presented by the Plaintiffs, within 30 days thereafter. The maximum delay, even if it is taken from the date of the pronouncement of the order i.e., 2nd December, 2016 would be only about 49 days. In the opinion of the Court, it is clear that the Plaintiffs could not have contemplated that the plaint would be rejected on 2nd December, 2016 when admittedly the arguments were to be heard specifically on the application under Order VI Rule 17 CPC. Though there seems to be some reference to arguments under Order VII Rule 11 CPC in the order dated 2nd December, 2016, the Plaintiffs cannot be completely blamed in this regard. While there is no doubt that the objection under Order VII Rule 11 CPC can be considered by the Court, *suo moto*, even without an application being filed to that effect, the manner in which it was done in the present suit is slightly unusual as the impugned order of the Trial Court records “application under Order VII Rule 11 CPC of the Defendant No.1 stands allowed”. This application had already stood withdrawn.

9. It is also well-established that delay beyond the limitation period can be condoned if “sufficient cause” is shown by the party, especially if the party has not acted negligently or without bona fides. The Supreme Court in ***Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81***, has held:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or



for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

10. This has also been recently reiterated by the Supreme Court in ***Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. [Civil Appeal No.7696 of 2021, decided on 16th December, 2021]***.

11. Without commenting on the procedure adopted by the Trial Court, in view of the present facts and settled position of law, this Court is of the opinion that, the Plaintiffs, in these facts deserve a hearing on merits before the Appellate Court. The delay in challenging the Trial Court's order dated 2nd December, 2016 is accordingly condoned.

12. The ***RCA No. 50/2017*** titled ***Jatinder Pal Singh v. Tejinder Singh*** is accordingly restored to its original number before the Ld. ADJ-11, Central, District, Tis Hazari Courts, Delhi. The first appeal shall now be heard on merits. The parties to appear on 7th March, 2022 before the Ld. ADJ-11, Central, District, Tis Hazari Courts, Delhi.

13. It is clarified that this Court has not gone into the merits of the issue raised in the appeal except issue of condonation of delay. The Appellate Court shall decide the appeal on merits without being influenced by the



observations made by this Court.

14. In these terms, the present second appeal is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 10, 2022/mw/MS

