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

+ **RSA 199/2019 & CM APPL. 43257/2019**

RAJVEER SINGH Appellant

Through: Mr.Jitendra Mohan Datta and
Mr.Shivendra Singh, Adv.

versus

BRAMJEET SINGH & ORS Respondents

Through: Mr. Kshitij Singh, Adv. with
Mr. Jyotirmay Vashisht, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

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24.05.2022

1. This appeal, under Section 100 of the Code of Civil Procedure, 1908 (CPC), assails order dated 25th July, 2019, passed by the learned Additional District Judge (“the learned ADJ”), rejecting an application, filed by the appellant under Section 5 of Limitation Act, 1963, for condonation of 58 days delay in preferring RCA 67/2017 (*Rajveer Singh v. Brahamjeet Singh & Ors.*), against judgment and decree dated 2nd June, 2017, passed by the learned Civil Judge in Suit No 184/2017 (*Raj Veer Singh v. Jawahar Singh & Ors.*).

2. In the facts of the present case, and keeping in mind the right of appeal conferred by Section 100 of the CPC, the present appeal raises the following substantial question of law:

“Whether the learned ADJ correctly exercised the discretion vested in him by Section 5 of the Limitation Act, in refusing to condone the delay in preferring of RCA 67/2017, by the



appellant?”

3. I have heard Mr. Amrendra Kumar Jha, learned Counsel for the appellant and Mr. Kshitij Singh, learned Counsel for the respondent at some length.

4. Admittedly, the delay in filing the appeal is only of 58 days. The application for condonation of delay, which has been dismissed by the impugned order dated 25th July, 2019, averred that the learned Counsel for the appellant could not ascertain, on 2nd/3rd June, 2017, that the appellant's suit had been dismissed on 2nd June 2017 and that, on 10th June, 2017, when he queried about the matter, he was given a wrong impression that it was decreed. Thereafter, summer vacations intervened, at the conclusion whereof the counsel for the appellant, on 3rd July, 2017 applied for a certified copy of the order dated 2nd June, 2017, which became available on 31st July, 2017. It was only on perusal of said certified copy, contended the application, that the learned Counsel came to know that the appellant's suit had in fact been dismissed.

5. The appeal, therefore, came to be filed on 29th August, 2017.

6. In this process, 58 days delay took place, of which the appellant sought condonation.

7. While it is true that delay in prosecuting legal remedies can, on occasion, eviscerate the availability of the remedy, it is equally true that, where the delay is not gross or unconscionable, the court is



required to make attempts to ensure that the right to prosecute the remedy provided by the law is not denied.

8. In an appropriate case, the court would always compensate the delay by awarding appropriate costs.

9. It is also well-settled that, where the delay is not unreasonable, a liberal approach is required to be adopted by the court, in order to ensure that the right to approach the court for redress is not lost.

10. The delay in the present case is only of 58 days. Given the reasons cited for the delay, I am of the opinion that a case was made out for condoning the delay, albeit on reasonable costs.

11. As such, subject to the appellant paying, to the respondent, costs of ₹ 3,000/- within two weeks from today, the impugned order would stand set aside to the extent it dismisses the appellant's application for condonation of delay, which would accordingly stand allowed, subject to payment of costs as aforesaid.

12. The substantial question of law framed at the commencement of this order accordingly stands answered in favour of the appellant and against the respondent.

13. The appeal stands allowed in the aforesaid terms and to the aforesaid extent.

C. HARI SHANKAR, J

MAY 24, 2022/dsn