



2024 : DHC : 1445



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 11/2024 & CM APPL. 1882/2024, CM APPL. 1883/2024,
CM APPL. 1884/2024, CM APPL. 1885/2024

KRISHNA & ORS. Appellants
Through: Mr. Sayyed Wasim M. Qadri,
Sr Adv, with Mr. Diwas Kumar, Mr. Sahil
Gupta and Mr. Shraveen Kumar Verma,
Advs.

versus

VINOD KUMAR & ORS. Respondents
Through: Ms. Savita Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
22.02.2024

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CM APPL. 1883/2024

1. This application seeks condonation of delay of 519 days in filing the present second appeal.

2. The order under challenge was passed by the learned Additional District Judge (ADJ) on 2 April 2022. The statutory period of three months to file the present appeal against the said order expired on or around 2 July 2022. The present appeal came to be filed only on 18 December 2023. There is a total 519 days' delay in filing the appeal.

3. I have heard Mr. Quadri, learned Senior Counsel for the



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petitioner/applicant on this application.

4. The only ground on which condonation of delay is sought is that Appellant 2 was indisposed and was suffering from depression and other similar disorders.

5. Mr. Quadri submits that there are medical certificates placed on record to evidence the fact that he was indeed unwell.

6. I have gone through the said medical records. There are three medical certificates filed by the appellants. All three pertain to Appellant 2. They have been issued by Dr. Ram Manohar Lohia Hospital and by the Deen Dayal Upadhyaya Hospital, New Delhi.

7. They are dated 23 April 2022, 8 June 2022 and 15 July 2023.

8. They indicate that Appellant 2 was suffering from low mood anxiety, generalised weakness, restlessness, feeling of mistrust and similar ailments.

9. Though the application alleges that Appellant 2 suffered an accident in August 2022, no document substantiating this averment is to be found. There is, however, a prescription by the Deen Dayal Upadhyaya Hospital dated 15 July 2023, certifying that the Appellant 2 had a history of accidental slip and fall at home.

10. Given the fact that the plea is of medical incapacity to prefer the



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appeal, I may ordinarily have chosen to take a lenient view in the matter. However, Ms. Savita Aggarwal, learned counsel for the respondent has pointed out that the illness, if any, of Appellant 2, cannot be a ground to seek condonation of delay of as long as 520 days, as the litigation was being prosecuted by Appellants 1 and 3 before the executing court, without any participation by Appellant 2. She has drawn my attention to the fact that

- (i) Appellants 1 and 3 had, on 3 April 2023, filed objections under Section 47 of the Code of Civil Procedure, 1908, to the execution petition instituted by respondents,
- (ii) consequent on the said objections being dismissed by the learned executing Court on 31 May 2023, Appellants 1 and 3 filed Miscellaneous Appeal No. DJ 32/2023 before the learned ADJ on 3 July 2023, and
- (iii) consequent on the dismissal of said appeal by the learned ADJ on 20 September 2023, Appellants 1 and 3 filed CM (M) 1622/2023 before this Court on or around 26 September 2023.

As such, Ms. Agarwal submits that Appellants 1 and 3 were duly prosecuting the proceedings and the illness, if any, of Appellant 2 cannot constitute a justification for condonation of delay.

11. The record reveals that, without challenging the order dated 2 April 2022, by way of filing the present second appeal, the appellants chose, instead, to seek and frustrate the execution proceedings filed by the respondents for execution of the orders which had been passed in their favour by first filing objections on 3 April 2023; on the said objections being dismissed, filing an appeal against the dismissal on 3



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July 2023 and, on the said appeal also being dismissed, filing CM (M) before this Court on 26 September 2023.

12. It is obvious to this Court that the delay in filing the present appeal is not *bonafide*. The appellants apparently felt that, so long as they could frustrate the execution proceedings, it was not required of them to challenge the impugned order. As the Supreme Court has often bemoaned, the travails of a litigant often start *after* he obtains a decree in his favour.

13. When the attempt at blocking of execution failed on two occasions, the appellants suddenly woke up and decided to file the present appeal.

14. Mr. Qadri, learned Senior Counsel for the appellants, submits that the appellants were possibly acting under erroneous legal advice.

15. Be that as it may, in view of the fact that the appellants had strongly opposed the execution proceedings by first filing objections on 3 April 2023, thereafter, a first appeal on 3 July 2023 and, thereafter, a CM (M) on 26 September 2023, there is no justifiable explanation for their not filing the present appeal within time.

16. The submission that the they were not properly advised cannot be a basis to condone the delay. Indeed, the present condonation of delay application is not premised on the plea of legal advice but is, rather, premised on the medical condition of Appellant 2.



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17. As the appellants were in fact objecting to the execution proceedings, albeit through Appellants 1 and 3, the medical condition of Appellant 2 cannot constitute a justifiable reason for this Court to condone as inordinate a delay as 519 days.

18. No satisfactory ground for condonation of delay in filing the present appeal has been made out.

19. CM APPL. 1883/2024 is accordingly dismissed.

20. Resultantly, RSA 11/2024 is dismissed on the ground of delay.

C. HARI SHANKAR, J.

FEBRUARY 22, 2024

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[Click here to check corrigendum, if any](#)