



2024:DHC:1499-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 99/2024 and CM APPL. 7376/2024, CM APPL. 7377/2024,
CM APPL. 7378/2024**

BAHADUR SINGH

..... Appellant

Through: Mr. Kamal Mohan Gupta, Mr. Mohd.
Aslam Khan, Mr. Gorakh Nath Yadav
and Mr. Amber Shehbaz Ansari,
Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Prashant Manchanda, Ms. Arani
Mukherjee, Ms. Nancy Shah and Ms.
Medha Haridas, Advocates for R-1.
Mr. V. P. Rana, Advocate for
Respondent Nos. 2-19

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Date of Decision: 13th February, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, ACJ : (ORAL)

CM APPL. 7376/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 99/2024 and CM APPL. 7378/2024 (for condonation of delay)

1. This Letters Patent Appeal has been filed challenging the impugned judgment dated 18th May, 2023, passed by learned Single Judge in W.P.(C)



10548/2018, dismissing the said writ petition filed against order dated 13th July, 2018, passed by the Financial Commissioner, Delhi, in second appeal bearing case No. 167/2016. The learned Single Judge held that the proceeding initiated by the Appellant under Section 11 of the Delhi Land Reforms Act, 1954 ('DLR Act') was highly belated and barred by limitation.

2. Brief facts necessary for deciding this appeal are as under:

2.1. It is stated that originally one late Sh. Khem Chand, was the recorded co-owner of the agricultural land, ad-measuring 132 Bighas 14 Biswas, situated in Village Holambi Khurd, Delhi, to the extent of his share i.e. 58 Bighas 1 biswas ('subject agricultural land').

2.2. It is stated that after the demise of Sh. Khem Chand on 23rd January, 1937, Appellant's father, Sh. Kali Ram (since deceased), who was barely 4-5 months old at that time, became the recorded owner of the subject agricultural land vide mutation no. 107 on 23rd February, 1937.

2.3. It is stated that post demise of his father, Sh. Kali Ram during his nascent years was brought up by his maternal grandparents and the entire subject agricultural land was being taken care of and cultivated by his cousins i.e., late Sh. Chandgi and late Sh. Kuraria [predecessors-in-interest of the Respondent Nos. 2 to 19 herein].

2.4. It is stated that Sh. Chandgi and Sh. Kuraria took undue advantage of Sh. Kali Ram's minority; played a fraud upon him and manipulated the revenue records of 1953-54 as regards the nature of their possession. It is stated that on the basis of said manipulated records, a *Bhumidhari* Certificate dated 14th April, 1958, was wrongly issued by the Revenue



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Assistant, Delhi, in their favour.

2.5. It is stated that Sh. Kali Ram died on 28th August, 2003. However, the Appellant herein became aware of the said fraud in recording the entries of 1953-54 by Sh. Chandgi and Sh. Kuraria in the year 2008 and accordingly, filed an application [in his capacity as the legal heir of Sh. Kali Ram], under Section 11 of the DLR Act ('Section 11 Application'), seeking declaration of *bhumidhari* rights qua the subject agricultural land, in his favour.

2.6. The said application was dismissed by the Sub-Divisional Magistrate /Revenue Assistant, Narela, Delhi ('Revenue Assistant'), vide order dated 27th July, 2009, holding the same to be barred by the principles of res-judicata.

2.7. The Appellant herein filed an appeal bearing No. 265/DC/NW/2009/3865 against the said order, which was allowed by the District Magistrate/Collector, GNCTD, North District, Main G.T. Karnal Road, Alipur, Delhi ('District Magistrate') vide order dated 04th April, 2016. The District Magistrate set aside the order dated 27th July, 2009 and remanded the matter to Revenue Assistant for *de-novo* proceedings and passing of a speaking order.

2.8. Subsequently, the Respondents filed the second appeal bearing case No. 167/2016, wherein the Financial Commissioner vide order dated 13th July, 2018, set aside the District Magistrate's order dated 04th April, 2016 and held that the Section 11 Application filed by Appellant is barred by the principles of res-judicata. The Financial Commissioner relied upon judgments and orders dated 1st May, 1958, 31st July, 1959 and 31st October,



1960, passed, inter-se, Sh. Kali Ram and Sh. Chandgi - Sh. Kuraria, to hold that the issue of *bhumidhari* rights has already been decided during the lifetime of Sh. Kali Ram vide aforesaid judgments and the Appellant's case is barred by the principles of res judicata.

2.9. The Appellant herein filed the writ petition against the Financial Commissioner's order dated 13th July, 2018, which has been dismissed vide impugned judgment dated 18th May, 2023 on the grounds that the Section 11 Application filed in the year 2008 for challenging the *bhumidhari* rights granted in the year 1958, is barred by limitation.

Submissions of counsel for parties

3. Learned counsel for the Appellant states that the learned Single Judge erred in holding that the challenge to Sh. Chandgi and Sh. Kuraria's *Bhumidhari* Certificate after fifty (50) years is barred by limitation. He states that since the issuance of the *Bhumidhari* Certificate in favour of Sh. Chandgi and Sh. Kuraria was illegal and fraudulent, limitation would not be applicable. He states that as per entry 4 in the Schedule - I to the DLR Act, there is no limitation prescribed for maintaining an application under Section 11 of the DLR Act.

3.1. He states that the Financial Commissioner in its order dated 13th July, 2018, erred in holding that the claim of the Appellant is barred by res-judicata on account of the decree of ejectment dated 31st October, 1960, passed by Additional Revenue Assistant in favour of Sh. Chandgi and Sh. Kuraria and against Sh. Kali Ram in Suit no. 207/1960. He states that no certified copy of the said judgment and decree of ejectment was placed on record by the Respondent Nos. 2 to 19. He states that therefore, the



judgments and orders relied upon by the Financial Commissioner were not proved on record in terms of the provisions of the Indian Evidence Act, 1872 ('Act of 1872') and could not have been relied upon to arrive at its findings.

4. In reply, learned counsel for Respondent Nos. 2 to 19 states that the existence and knowledge of the judgment and decree of ejectment dated 31st October, 1960, was pleaded and admitted by the Appellant himself in his Section 11 Application. She states that Sh. Kali Ram had sought to illegally occupy the subject agricultural land; and he was evicted from the said land in pursuance to the aforesaid decree of eviction. She states that thereafter, Sh. Kali Ram did not challenge the *bhumidhari* rights of Sh. Chandgi and Sh. Kuraria during his lifetime until his demise on 28th August, 2003.

4.1. She states that Sh. Kali Ram was aware of the issuance of *Bhumidhari* Certificate and had initiated substantive proceedings to challenge the same; however, did not succeed in the said proceedings. She states that the Appellant herein, who is the son of Sh. Kali Ram, filed the Section 11 Application challenging the *Bhumidhari* Certificate in the year 2008 and therefore, the learned Single Judge has rightly held that this application was not maintainable and barred by limitation.

Findings and analysis

5. This Court has considered the submissions of the learned counsel for the parties and perused the record.

With respect to plea of non-admissibility of judgments relied upon by the Financial Commissioner

6. In the facts as noted above, admittedly, the *Bhumidhari* Certificate



was issued in favour of Sh. Chandgi and Sh. Kuraria on 14th April, 1958. In his Section 11 Application¹, the Appellant unequivocally admitted that Sh. Kali Ram suffered a judgment and decree of eviction from the subject agricultural land on 31st October, 1960, in the suit for ejectment filed under the DLR Act, by Sh. Chandgi and Sh. Kuraria on the basis of the *Bhumidhari* Certificate.

7. Pertinently, in the said judgment dated 31st October, 1960 a reference is made to an earlier order dated 30th April, 1959, passed in the said proceedings, wherein the defence raised by Sh. Kali Ram to the effect that this suit of ejectment should not proceed as he has challenged in a civil suit, the *bhumidhari* Certificate issued in favour of Sh. Chandgi and Sh. Kuraria which is illegal and void, was rejected. The Additional Revenue Assistant held that the *bhumidhari* rights cannot be challenged in the ejectment proceedings and that the appropriate remedy for the Appellant is to challenge the said rights under Rule 8(4) of the Delhi Land Reforms Rules, 1954 ('DLR Rules').

8. In terms of the statement made by Sh. Kali Ram [as recorded in the order dated 30th April, 1959] to the effect that he has filed a suit challenging the *bhumidhari* rights of Sh. Chandgi and Sh. Kuraria, the Financial Commissioner has also referred to a subsequent judgment dated 31st July, 1959, dismissing the civil Suit no. 310/1958 filed by Sh. Kali Ram seeking cancellation of *Bhumidhari* Certificate.

9. Therefore, the judgments and orders dated 30th April, 1959, 31st July,

¹ Paragraphs 11 and 21 of the amended petition filed under Section 11 of the DLR Act for declaration of



1959 and 31st October, 1960 are all cross referred. The Respondent Nos. 2 to 19 filed on record before the Revenue Assistant and the Financial Commissioner, the copies of each of the aforesaid judgments and orders. The knowledge of the said orders is pleaded at paragraphs 11 and 21 of the Section 11 Application filed by the Appellant, though the Appellant himself did not file the said orders with his application. The Appellant has not placed on record with his rejoinder, any copy of the said judgments and orders, which is at variance with the copy produced by the Respondents.

10. In these admitted facts, the reliance placed by the Financial Commissioner on the copy of the judgment and orders dated 30th April, 1959, 31st July, 1959 and 31st October, 1960 filed by Respondents, was in accordance with Section 65(b) of the Indian Evidence Act, 1872 ('Act of 1872').

11. To this effect, even Section 58 of the Act of 1872, stipulates that facts which are admitted by the parties in the pleadings need not be proved. Thus, the Financial Commissioner was well within its jurisdiction to admit in evidence the copies of the judgment and orders dated 30th April, 1959, 31st July, 1959 and 31st October, 1960 and rely upon its contents to evaluate the issue of res-judicata.

Bar of res-judicata

12. The assertion of the Appellant that no challenge was raised by Sh. Kali Ram, to *Bhumidhari* Certificate issued in favour of Sh. Chandgi and Sh. Kuraria, during his life time is contrary to the contents of the judgment and

bhumidhari rights dated 17th March, 2009.



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orders dated 30th April 1959, 31st July, 1959 and 31st October, 1960. It is evident that Sh. Kali Ram filed a substantive Suit bearing no. 310/1958 challenging the declaration of *bhumidhari* rights in favour of Sh. Chandgi and Sh. Kuraria, however, the same was dismissed on merits vide judgment dated 31st July, 1959 and the said judgment has attained finality. The finding of res-judicata by the Financial Commissioner is therefore, duly borne out from the record.

No right to sue survived to the Appellant

13. In light of the aforesaid orders and judgments of 1959-1960, it is evident that the declaration of the *bhumidhari* rights of Sh. Chandgi and Sh. Kuraria was, admittedly to the knowledge of Sh. Kali Ram since the year 1958 and the said declaration attained finality during his lifetime. Post Sh. Kali Ram's eviction in 1960, admittedly, Sh. Chandgi and Sh. Kuraria and their successors remained in uninterrupted possession of the subject agricultural land without any objection from Sh. Kali Ram, who died on 28th August, 2003. In the aforesaid facts, the Financial Commissioner held that since as on the date of his death, Sh. Kali Ram himself had no legal rights in the subject agricultural land and no rights were inherited by the Appellant herein so as to enable him to maintain the Section 11 Application. We are of the considered opinion that the said finding of the Financial Commissioner is correct inasmuch as 'no right to sue' survived in favour of the Appellant herein to file and maintain the Section 11 Application in the year 2008.

Highly belated filing of the application under Section 11 of DLR Act

14. The Appellant is claiming its rights in the subject agricultural land on the basis of the mutation entry no. 107 dated 25th February, 1937, sanctioned



in favour of Sh. Kali Ram, and is aggrieved by the issuance of *Bhumidhari* Certificate dated 14th April, 1958. The challenge to the *Bhumidhari* Certificate has been made after fifty (50) years in the Section 11 Application filed in September, 2008, which has given rise to the issue of limitation and delay and laches. To determine the date when the cause of action to challenge the *Bhumidhari* Certificate arose in favour of Sh. Kali Ram, it would be relevant to take note of the historical facts applicable to the Appellant.

15. Though the mutation entry in favour of Sh. Kali Ram recording his proprietorship pertains to the year 1937, there was a significant intervening legislative event on 20th July, 1954, i.e., the DLR Act was brought into force on said date. With the enactment of the said Act, proprietors of agricultural land ceased to exist and if the land holding was under cultivation with a tenant, such a tenant became the *bhumidhar*, whereupon the rights of the proprietor in that land ceased. This has been succinctly enunciated by the Division Bench of this Court in *Deepak Yadav v. GNCTD*,² wherein at paragraph 11 it has been held as under:

“11. We may also notice that the object of the Delhi Land Reforms Act was to modify the zamindari system, unify the Punjab and Agra systems of tenancy laws and to make a provision for other matters connected therewith. The Reforms Act created a new single category of tenure rights in the agricultural land i.e. bhumidhari rights and only one class of sub tenure rights that is to say Asamis (refer Ram Mehar supra). With the enactment of the said law, proprietors of agricultural land ceased to exist and if any land was part of a holding of a proprietor, he became a bhumidhar of it; if it was a part of a holding of some other person such as a tenant or a sub tenant he became either a bhumidhar or an Asami, where upon the rights of the propertor [sic] in that land ceased. Lands, which were not holdings of

² 2015 SCC OnLine Del 7943



either the proprietor or any person, vested in the Gaon Sabha. A bhumidhar, though has a right to exclusive possession of the land in his holding but has a right to use it for agricultural and related purpose only. A bhumidhar is prohibited from using the land in his possession for purposes other than agriculture and has only a limited right to effect a mortgage and is debarred from effecting any lease of his land and if makes any such transfer with possession, the same is deemed to be a sale. The interest of a bhumidhar is quite different from that of a proprietor or a tenant. A bhumidhar has not an unrestricted interest of his land. He is given the right to use the land in a particular manner. To the same effect is the judgment of another Division Bench in Nathu v. Hukam Singh AIR 1983 Delhi 216.

(Emphasis Supplied)

16. Similarly, the Supreme Court in its judgment in **Hatti v. Sunder Singh**³ on the said issue held as under:

“3. Learned counsel appearing for the appellant took us through the various provisions of the Act to show that the Act is a complete Code which lays down the rights that any person can possess in agricultural land in the area to which the Act applies, and the remedies that can be sought in respect of such land for obtaining declaration of their rights or any other declaration for possession. The Act abolished the ownership of agricultural land by the previous proprietors. This was affected by first laying down in Sections 11 and 13 that proprietors will become Bhumidars in respect of their lands which were their Khudkasht or Sir, while tenants would become Bhumidars in respect of their holdings. Under Section 6 of the Act, persons belonging to several classes, which included non-occupancy tenants of proprietor's grove and sub-tenants of tenant's grove, and non-occupancy tenants of pasture land, or of land covered by water, and some other classes, shall become Asamis...

*...
Sections 6, 11, 13 and 154 of the Act read together, thus, show that, after the Act came into force, proprietors of agricultural land as such ceased to exist. If any land was part of a holding of a proprietor, he became a Bhumidar of it. If it was part of a holding of some other person, such as a tenant or a sub-tenant etc., he became either a Bhumidar or an Asami, whereupon the rights of the proprietor in that land ceased. Lands, which were not holdings of either the proprietor or any other person, vested in the Gaon Sabha. In the case of proprietors, their rights in the land continued to exist only in respect of holdings which, under the definition, must have been*

³ (1970) 2 SCC 841



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either their Sir or Khudkasht at the commencement of the Act. If it was not Sir or Khudkasht of a proprietor, it would not be his holding and, consequently, such land would vest in the Gaon Sabha under Section 154, the result of which would be that the rights of the proprietor would be extinguished....”

(Emphasis supplied)

17. Therefore, the effect of the mutation entry number 107 dated 25th February, 1937 was effaced with the coming into effect of the DLR Act. The crucial fact of determination of rights under the DLR Act became the cultivatory possession of the subject agricultural land. The Appellant in his Section 11 Application admitted that Sh. Chandgi and Sh. Kuraria were cultivating the subject agricultural land in the year 1954, though it has been alleged that they were carrying out the cultivation on behalf of Sh. Kali Ram (and was therefore, *khudkasht*) and thus, not entitled to declaration of *bhumidhari* rights. In light of the judgment of the Supreme Court and considering the fact that Sh. Chandgi and Sh. Kuraria were actually cultivating the land on the spot, the declaration of *bhumidhari* rights by Revenue Authorities in their favour, in the year 1958, stands to reason. Therefore, the cause of action for Sh. Kali Ram to dispute the declaration of *bhumidhari* rights granted in favour of Sh. Chandgi and Sh. Kuraria arose in 1958.

18. The Financial Commissioner has examined the judgment and orders dated 01st May, 1958, 31st July, 1959, 30th April, 1959 and 31st October, 1960 to conclude that (in fact) the challenge raised by Sh. Kali Ram to the issuance of *Bhumidhari* Certificate in favour of late Sh. Chandgi and Sh. Kuraria had been rejected, during the life time of Sh. Kali Ram and therefore, held that the Section 11 Application filed by the successor-in-



interest was barred by res-judicata. The said finding is duly borne out from the record. We may note that the existence of the said orders and its knowledge to the Appellant, is also discernible from paragraph 21 of the Section 11 Application.

19. Be that as it may, the Appellant does not dispute that Sh. Kali Ram had knowledge of the issuance of the *Bhumidhari* Certificate at the contemporaneous time in the year 1958. This fact as regards knowledge is a material fact for deciding the issue of limitation and the date of cause of action.

20. The Appellant has contended that since as per Schedule I of the DLR Act, 1954, no period of limitation is prescribed for filing Section 11 Application and, therefore, he could have maintained the present application in the year, 2008 for challenging the *Bhumidhari* Certificate issued in 1958. We are unable to accept this submission of the Appellant.

21. The Supreme Court in the judgment of *Hatti v. Sunder Singh* (supra) while holding that there is no period of limitation for filing Section 11 Application, has observed that this is so since the (affected) party may not be 'aware' of the fact that a declaration has been issued in respect of his holdings in favour of another. The relevant portion of the judgment of Supreme Court in *Hatti* (supra) reads as under

"7. ...but a party wanting to raise such a question of title in order to claim Bhumidari right cannot directly approach the civil court. The Act is a complete Code under which it is clear that any one, wanting a declaration of his right as a Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under Item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of



another...”

(Emphasis Supplied)

22. In the facts of this case, however, the issuance of the *Bhumidhari* Certificate in the year 1958 was to the knowledge of Sh. Kali Ram, at the contemporaneous time. The Appellant’s father, Sh. Kali Ram, was undeniably ‘aware’ of the issuance of *Bhumidhari* Certificate in the year 1958 itself. The cause of action for filing an application under Section 11 of the DLR Act by Sh. Kali Ram therefore, arose in 1958 itself. Thus, applying the principles of delay and laches, the filing of the application by the legal heirs of Sh. Kali Ram in the year 2008 was grossly barred by delay and laches.

23. To conclude, the challenge to the *Bhumidhari* Certificate dated 14th April, 1958, for the first time filed in the year 2008 i.e., fifty (50) years later, by the Appellant herein and that too without the cultivatory possession has been rightly held by the learned Single Judge to be barred by limitation. This Court is unable to accept the contention of the Appellant that due to the plea of the alleged fraud set out in the pleadings, the bar of limitation or delay and laches would not be attracted.

24. To entertain an application fifty (50) years later would be against public policy which forms the basis of the law of limitation and is intended to bury all acts of the past which have not been agitated by the applicant unexplainably and have from lapse of time become stale⁴. As noted above, the main contestants i.e., Sh. Kali Ram, Sh. Chandgi and Sh. Kuraria are all dead already. Further, with the passage of this time the collation of evidence,



if any, of the allegations made by the Appellant would be impossible to be led and, in all probability, lost/weeded out making it impossible for the competent authority to fairly adjudicate the disputes.

No locus to maintain Section 11 Application

25. Further, both Sh. Kali Ram and the Appellant have admittedly not been in physical possession of the subject agricultural land at least since the year 1960 i.e., after the passing of the judgment and decree of eviction against late Sh. Kali Ram. The Section 11 Application is envisioned to be filed by person, who is in cultivatory possession⁵ of the agricultural land, for declaration of the nature of its *bhumidhari* rights under the DLR Act. In this regard, it would be instructive to refer to the judgment of this Court in ***Bishnoo and Ors.*** (supra), wherein the Supreme Court has held as under:

“7. It will be noticed that the Delhi Land Reforms Act contemplates Bhumidhari rights being granted to actual tillers of the land who are shown in cultivated possession during the year 1953-54 either by himself or by servants or hired labour at the commencement of the Act or at any time during the period of five years immediately before the commencement of the Act, whether or not, it was so cultivated at such commencement, provided that it has not, at any time after having been so cultivated, been let out to a tenant.

...

*9. The purpose of the Delhi Land Reforms Act was to protect the persons who were in **actual** cultivatory possession of the land **on spot**. The purpose of the Act was further to vest the remaining unused and bunjar land in the Gaon Sabha so as the Gaon Sabha may further distribute it to the landless persons and in that way the purpose of the Act was to end the exploitation of the landless, workers of the land, labourers and also of the poor and petty cultivators from the clutches of the big Zamindars/Proprietors of the land. All the proprietary rights in any land including the shamlat deh came to an end on account of the provisions of this Act...*

(Emphasis supplied)

⁴ *Basawaraj and Anr. v. Special Land Acquisition Officer*, (2013) 14 SCC 81

⁵ *Bishnoo v. Gaon Sabha, Soongarpur*, (1986) 10 DRJ 142 (paragraph 7 and 9)



26. In this case, Sh. Kali Ram was admittedly evicted from the subject agricultural land in the year 1960 and the Appellant had never been in cultivatory possession of the said land. Further, the Section 11 Application cannot be maintained on the basis of proprietary rights as is sought to be done by the Appellant herein, whereas in contrast Sh. Chandgi and Sh. Kuraria were in cultivatory possession as is admitted by the Appellant.

27. In these facts, the maintainability of the Section 11 application by the Appellant, who is admittedly not in cultivatory possession himself, is not maintainable.

With respect to the allegation of fraud being played upon Sh. Kali Ram when he was a minor

28. Lastly, Sh. Kali Ram had attained majority as on 14th April, 1958, when the *Bhumidhari* Certificate was issued in favour of Sh. Chandgi and Sh. Kuraria. The Appellant has alleged that Sh. Kali Ram, the recorded owner was a minor in the year, 1937 and therefore, Sh. Chandgi and Sh. Kuraria were permitted to cultivate the lands and were indeed cultivating in the year 1954, when the DLR Act came into force. The Appellant has contended that Sh. Kali Ram was entitled to claim that the land was held by him as *khudkasht*. In these facts, assuming the same to be correct, a challenge to the declaration of *bhumidhari* rights in favour of Sh. Chandgi and Sh. Kuraria, under Section 11 (2) of the DLR Act, could have been maintained by Sh. Kali Ram maximum within six (6) months of the commencement of the Act in 1954 or six (6) months from 14th April, 1958 to prove that the cultivatory possession of Sh. Chandgi and Sh. Kuraria was on behalf of late Sh. Kali Ram, but not thereafter. For this reason, additionally,



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the Section 11 Application is barred by limitation.

29. In view of the aforesaid findings, the present appeal is without any merits and is dismissed.

CM APPL. 7378/2024 (for condonation of delay)

30. This application has been filed seeking condonation of delay of 172 days in filing this petition. In this application, it is stated that the Appellant became aware of pronouncement of the impugned judgment in July, 2023. It is stated that the Appellant was earlier advised to file a Special Leave Petition ('SLP'), however, later on, he was informed that the appropriate remedy is to file an LPA before this Court. It is stated that due to confusion of the appropriate remedy there has been a delay of 172 days in filing. We find no merit in this application and for this additional reason this appeal is dismissed both on merits and on ground of delay. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 13, 2024/msh/hp/aa