



2024:DHC:2605



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RSA 60/2024****ORIENTAL INSURANCE CO. LTD** Appellant

Through: Mr. Mohit Arora, Advocate

versus

DEVANSH REAL ESTATE PVT. LTD.

& ANR. Respondents

Through: Mr. Ashish Kumar for Mr. Jai
Sahai Endlaw, Advocate for R1**CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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01.04.2024

1. The second appeal under Section 100 of the Code of Civil Procedure, 1908 assails order dated 23 November 2023 passed by the learned Additional District Judge ("the learned ADJ") in RCA DJ 59/2023 (*Oriental Insurance Company Ltd. v. Devansh Real Estate Pvt Ltd and anr*). By the said appeal, the appellant had assailed judgment and decree dated 3 September 2019 passed by the learned Civil Judge in CS SCJ 10770/2016 as well as order dated 21 August 2023 passed by the learned Civil Judge in Misc 202/2019 whereby the appellant had sought review of the earlier order dated 3 September 2019.

2. It may be mentioned, though it is of no particular relevance, that, by order dated 21 August 2023, CS SCJ 10770/2016 was



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decreed. As such, the appellant was the defendant in CS SCJ 10770/2016 and the respondent was the plaintiff.

3. The learned ADJ has not proceeded to examine the appellant's appeal on merits. He has rejected the appeal, in so far as it challenged the order dated 3 September 2019, on the ground it was not accompanied by any application for condonation of delay, and has rejected the appeal, in so far as it challenges the order dated 21 August 2023, on the ground that an appeal against an order rejecting an application for review is not appealable.

4. It is obvious that, even if no first appeal lay against the order dated 21 August 2023, an appeal against the initial judgment and decree dated 3 September 2019 was certainly maintainable.

5. Mr. Mohit Arora, learned counsel for the appellant, sought to contend that the learned ADJ was not justified in rejecting the appellant's appeal on the ground of limitation, as the delay, if any, occurred only because the appellant was awaiting the outcome of the review application Misc. 202/2019 filed by it before the learned Civil Judge.

6. It was for this reason, he submits that, no application for condonation of delay was filed with the appeal.

7. In these circumstances, the following substantial question of law arises for consideration :



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“Whether the learned ADJ was not in error in dismissing the appellant’s appeal in so far as it challenged the judgment/decreed dated 3 September 2019 passed by the learned Civil Judge on merits, solely on the ground of delay as no application for condonation of delay had been filed?”

8. To my mind, the approach of the learned ADJ was unreasonably hypertechnical. At the very least, the appellant could have been granted an opportunity to file an application for condonation of delay in filing the appeal, in so far as it sought to challenge the judgment and decree dated 3 September 2019 passed by the learned Civil Judge decreeing the respondent’s suit.

9. Mr. Ashish Kumar, learned counsel for the respondent, very fairly agrees to the impugned order being set aside and the matter being remanded to the learned ADJ for consideration of the aspect of delay on the part of the appellant in preferring RCA DJ 59/2023. He, however, prays that discretion be retained with the learned ADJ on whether to condone or not to condone the delay.

10. The suggestion is fair, and acceptable to learned Counsel for the appellant.

11. As such, subject to the appellant filing an application for condonation of delay in filing RCA DJ 59/2023 before the learned ADJ within a period of one week from today, the said application would be heard by the learned ADJ and decided within a period of three weeks therefrom.

12. In deciding the application, the learned ADJ would not be



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influenced by any findings / observations contained in the impugned order dated 23 November 2023, which is, accordingly, quashed and set aside.

13. Both sides would present themselves before the learned ADJ on 12 April 2024, for being heard on this aspect.

14. No extension of time for filing the application for condonation of delay would be granted and no adjournment would be allowed to either side on 12 April 2024.

15. The application for condonation of delay would be decided by the learned ADJ as expeditiously as possible thereafter and, at any rate, on or before 24 April 2024, and the decision communicated to learned counsel for the parties.

16. The substantial question of law framed in para 7 *supra* is therefore answered in the affirmative in favour of the appellant.

17. The appeal stands allowed to the aforesaid extent with no orders as to costs.

C.HARI SHANKAR, J

APRIL 1, 2024/yg

Click here to check corrigendum, if any