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

+ **RFA 559/2023**

N K MEHRA

..... Appellant

Through: **Ms.Aruna Mehta, Advocate**

versus

RAJINDER TEK CHAND JAINA TOWERS & ORS.

..... Respondents

Through: **Mr.Rajesh Aggarwal, Advocate for
R-2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

27.05.2024

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CM APPL. 36356/2023 (Delay)

1. The instant application under Section 5 of the Limitation Act, 1963 has been filed on behalf of the appellant/applicant seeking condonation of delay of 4710 days in filing the instant regular first appeal.
2. Learned counsel appearing on behalf of the appellant submitted that a suit for recovery bearing suit No. 108/2008 was filed before the learned Trial Court, which was decreed in favour of the appellant vide judgment dated 30th March, 2010.
3. It is submitted that in the captioned regular first appeal, the appellant is seeking amendment by way of correction of mis-description in the name of respondent No. 1 from Rajinder Tek Chand Jaina to M/s Jaina Properties (P) Ltd. through its Managing Director, in the pleading as well as in the judgment dated 30th March, 2010 so that the decree could be executed.



4. It is submitted that subsequent to the passing of the judgment dated 30th March, 2010, the respondent No.2 and 3 filed an appeal bearing RFA No. 393/2010 before this Court against the aforesaid judgment dated 30th March, 2010. The said appeal got admitted by this Court vide order dated 3rd June, 2010, whereby, a sum of Rs.5 Lakhs was deposited by the respondent No.1 & 2 with the registry of this Court.

5. It is also submitted that there is a delay in filing the instant appeal as the former counsel did not file the same within the stipulated time period. It is further submitted that the appellant, being a layman, was not aware of the technicalities of law to file the instant appeal within stipulated time and the delay in filing the same is neither intentional nor deliberate.

6. Therefore, it is prayed that the instant application may be allowed, delay may be condoned and the appeal be heard on merits.

7. *Per contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant application submitting to the effect that the instant application is nothing, but gross misuse of process of law.

8. It is submitted that the reasons given in the instant application are insufficient to explain the inordinate delay of 4710 days in filing the instant appeal.

9. It is submitted that reply to the instant application has been filed and the original suit was filed by the appellant against a non-existing company as defendant No.1. The answering respondent was impleaded as defendant No.2 in the suit, in the capacity of managing director/director of defendant No.1-company, which was non-existing as stated above. It is further submitted that the defendant No.2 was wrongly impleaded as he is not the managing director/director of the non-existent company.



10. Learned counsel appearing on behalf of the respondents submitted that the suit was decreed in favour of the appellant stating to the effect that vide a Memorandum of Settlement executed between the answering respondent and his brother Mr. Rakesh Jain, the answering respondent, i.e., Rajinder Tek Chand Jaina Towers is liable for all the civil liabilities *qua* the concerned building.

11. It is submitted that the inordinate delay so caused in preferring the present appeal has not been explained and no cogent justification is pleaded in the instant application. Hence, it is prayed that the instant application, being devoid of any merit is liable to be dismissed.

12. At this juncture, learned counsel appearing on behalf of appellant submitted that rejoinder to the reply to the instant application filed by the respondents has already been filed vide Diary No. 1147523, which is returned under objection. Thus, she has handed over the rejoinder during the arguments and the same is taken on record.

13. In rejoinder, it is stated that the instant appeal is filed only for a limited purpose of correction of the name of the respondent No.1, which was allegedly a non-existing company. Hence, it is prayed that the instant application may be allowed.

14. Heard learned counsel for the parties and perused the contents of the application.

15. The appellant/applicant has submitted the below mentioned reasons in his application seeking condonation of delay. The relevant paragraphs of the said application are as follows:

“...7. That unfortunately the case was pursued by Shri S.C. Arora before the trial court as well as before the high court and he did not deem it proper to file a counter appeal for amendment of the memo



of parties in the decree, suit as well as in the judgement from Rajender Tek Chand Jaina Towers previously known as M/S Jaina Properties (P) Ltd. to M/S Jaina Properties (P) Ltd. as it was a mis-description and the bonafide mistake committed by the appellant was described as he saw the signboard on the top of the building wherein it was written as Rajender Tek Chand Jaina Towers though this petition was hotly contested by the respondent no.2 and 3 on behalf of the M/S Jaina Properties (P) Ltd. and also denied the liability of the M/S Jaina Properties (P) Ltd. the appellant who is a layman in the field of law was totally dependent upon his counsel for drafting and for persuasion of the suit and to tackle it for legal intricacy. The said counsel was not keeping the good health and asked the appellant to engage another lawyer as he was not in a position to attend the cases at high court. Subsequently the appellant engaged another lawyer. The above said appeal filed by the Rajender Jaina was admitted and fixed in the regular list and the new counsel was waiting for its turn when this case be notified on the board for daily list. Subsequently the said new counsel had gone through Section 151 to 153 of the CPC and it stuck to her mind that the amendment in the memo of parties in the decree, judgement and the suit can be done under the above said provisions. On 24.12.2020 the said counsel moved an application under the above said provisions for rectification as mentioned above. The said application was kept pending and it was decided on 10.04.2023 and the learned ADJ had suggested to move to High Court to correct in the misdescription in the memo of parties in the suit, judgement and decree and the amendment in the memo of parties in the decree, suit, and judgement cannot be done under section 151 to 153 of the CPC. The application, the reply of the opposite side and the statement of the counsel to withdraw the application with the liberty to file the appropriate application alongwith order dated 10/04/2023 before the concerned court are annexed herewith.

8. That from the above said facts it transpires that the respondent no. 2 is the ultimate beneficiary of the Satyam Tower vide MOU dated 04.04.1997 and he had become the beneficiary before filing of the present suit in the year 1997 and furthermore M/S Jaina Properties (P) Ltd. is a family business of Jaina family and all the family members are the shareholder of this company. From this MOU the maximum shares are allotted to respondent no.3 and this building that is Satyam Complex came in the share of the



respondent no. 2. The case is hotly contested by the respondent no.2 and 3 not on their behalf but on behalf of M/S Jaina Properties (P) Ltd. though wrong description was given but the learned ADJ also acknowledged the reasons for giving the mis-descriptions of the name of the company. The appellant could not file the earlier appeal as he was layman in the field of law and the previous counsel, Sh. S.C. Arora had also not advised to file the counter appeal to correct/ amend the mis-descriptions. The present counsel was also under the bonafide impression that the verdict of the Ld. ADJ is good enough and appeal would be dismissed and she was waiting for listing of the above said appeal from regular list to main list daily. However subsequently the said counsel discussed the matter with other colleagues in the year 2020 where similar case was being discussed and it was advised to move an application under section 151 to 153 of the CPC for amendment of the cause title in the decree, judgement, and in the suit. And accordingly, the present counsel moved an application for correction in the cause title of the decree, judgement, and in the memo of parties in the suit in the year of 2020. However on 10.04.2023, the learned ADJ advised that the above said sections cannot be used to correct the mis-description in the decree, judgement, and the suit, and proper way is to file the appeal.

9. Thereafter, the counsel got the certified copies. Since the decree is stayed in a RFA no.393/2010 and therefore the liability of the respondent no.2 still stands apart from respondent no.1. It is a well settled law that the court is meant for justice and technicality should not override the justice system and in the deserving cases the delay should be condoned if there is merit in the appeal. In the present case the mis-description can be corrected by this Hon'ble court in the decree, judgement, and memo of parties in the suit as it is a well deserving case..."

16. Upon perusal of the above extracted paragraphs of the application seeking condonation of delay, it is made out that the appellants' case for condonation of delay heavily relies upon the fact that the appellant is a lay man who is not aware of the technicalities of legal procedure. Further, the former counsel of the appellant failed to file the present appeal seeking



amendment of the memo of parties in the decree. It has been submitted on behalf of the appellant that the above said is the *bona fide* mistake. It has been further submitted that when the appellant engaged the present counsel, she filed an application under Section 151 to 153 of the Code of Civil Procedure, 1908 before the learned Trial Court on 24th December, 2020, thereby, seeking rectification as mentioned above. The said application was kept pending and it was decided on 10th April, 2023 when the learned Trial Court suggested the appellant herein to move to High Court as the amendment in the memo of parties in the decree, suit, and judgment cannot be done under section 151 to 153 of the Code of Civil Procedure, 1908. The appellant, therefore, prays that in light of the afore stated reasons, the delay caused in filing the captioned appeal may be condoned.

17. Insofar the law with regard to the principle of condonation of delay in filing an appeal is concerned, the Hon'ble Supreme Court, in a recent judgment has reiterated the jurisprudence of condoning delay *qua* Section 5 of the Limitation Act, 1963. In ***Pathapati Subba Reddy v. LAO*, 2024 SCC OnLine SC 513**, the Hon'ble Supreme Court has categorically observed that in order to determine whether the grounds raised by a party seeking condonation of delay fall within the ambit of 'sufficient cause', it has to be seen as to whether the delay has been properly, satisfactorily and convincingly explained.

18. Filing of a particular appeal or application within the limitation is the prescribed rule and any deviation from such prescribed rule is against the nature of settled legal propositions. As per the settled law, while condoning the delay, more specifically, enormous delay; the Courts have to consider the genuineness of the reasons furnished by the party, seeking condonation



of delay. Huge delay is to be condoned only if the reasons are genuine and acceptable. Thus, the condonation of delay cannot be a routine affair. A person, who is not vigilant, is not entitled for the relief after a prolonged period.

19. Upon perusal of the contents of the application, reply filed by the respondents as well as the rejoinder to the said reply, this Court does not find any cogent reason to condone the inordinate delay of 4710 days in filing the instant appeal. The appellant remained silent and non-vigilant upon his rights, and approached this Court after a lapse of more than 10 years. With regard to the same, this Court is of the view that the appellant has failed to make out case in his favour and has approached this Court at such a belated stage which is in complete disregard to the statutory mandate of law as well as the position of law settled by the Hon'ble Supreme Court. The appellant has also failed to state the reasons which led to the huge delay of 4710 days and the reasons, so provided, does not seem to be sufficient and *bona fide*, and therefore, cannot be accepted by this Court.

20. In light of the discussions on facts as well as on law, this Court does not find the grounds raised by the appellants for condonation of delay to be cogent since the said grounds do not meet the test of 'sufficient cause' laid down by the Hon'ble Supreme Court as well as this Court in a catena of judgments. Therefore, this Court is not inclined to exercise its discretion under Section 5 of the Act to condone the inordinate delay in filing the captioned appeal and thus, the present application seeking condonation of delay in filing the regular first appeal is liable to be dismissed.

21. In view of the above facts and circumstance as well as the settled position of law, the instant application stands dismissed.



RFA 559/2023

In view of the order of even date passed in CM APPL. 36356/2023,
the instant regular first appeal stands dismissed.

CHANDRA DHARI SINGH, J

MAY 27, 2024
dy/ryp

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