



2024:DHC:8363



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 28.10.2024+ RFA 665/2023

ATHER ALI @ MUNNI RAJA & ANR.

.....Appellants

Through: Mr. Vijayant Sharma and Mr. Ajay
Pratap Singh, Advocate

versus

MOHD.SHAFI (DECEASED) THROUGH AR MOHD.AKBAR

.....Respondent

Through: Mr. Gobind Malhotra and Mr.
Gurpreet Singh, Advocate

CORAM:

JUSTICE GIRISH KATHPALIA

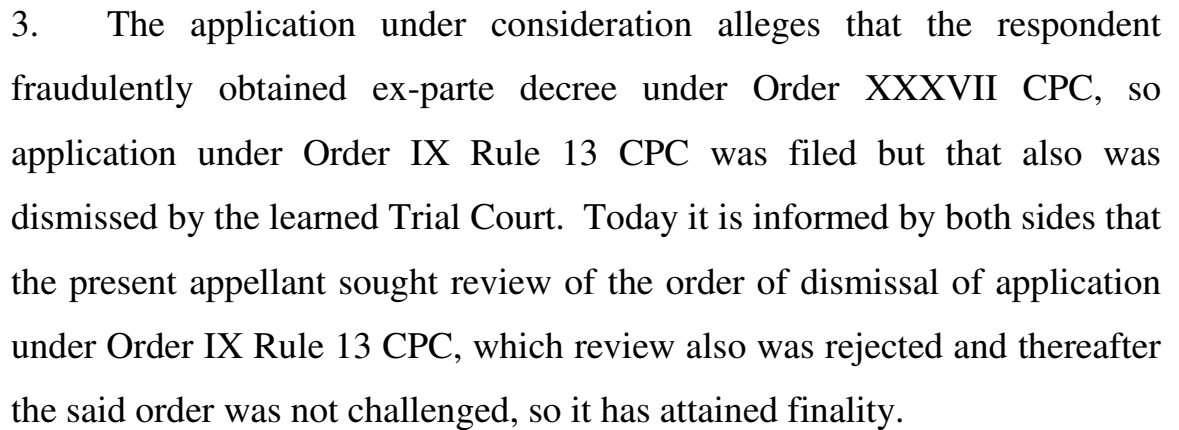
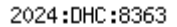
ORDER (ORAL)CM APPL. 42627/2023 (*Application filed on behalf of appellants for
condonation of delay in filing the appeal*)

1. By way of this application, the appellants seek condonation of delay of 1926 days in filing this appeal to challenge money decree, passed as application for leave to defend under Order XXXVII CPC was not filed. I have heard learned counsel for both sides.

2. The judgment and decree impugned in the present case being dated 11.04.2018, the period of limitation to file the appeal expired on 10.07.2018 but the present appeal was filed on 26.07.2023 i.e., with a delay of more than five years.

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4. It would be apposite to extract the relevant pleadings from the delay condonation application, which is as follows:

4. That just 5 days ago before the date fixed i.e.31.05.2019 before the Ld. Additional District Judge in the Execution proceedings bearing Ex. 466/2018, the Respondent's AR Mohd. Akbar alongwith 2-3 unknown persons visited at the rented accommodation of the Appellants and told the Appellants about the execution proceedings in the captioned matter before the Ld. Additional District Judge.

6. That thereafter the wife of Appellant no. 1 i.e. defendant no.2 was not well and suffering from pain due to stone in gall bladder and therefore the Appellants could not file the present application within time”.

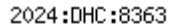
5. Today, during arguments on the delay condonation application, learned counsel for appellants submits additional explanation of delay, stating that since the appellant was in jail, he could not file the appeal within the prescribed period and that the summons under Order XXXVII CPC were not served on the appellant in accordance with law. On the other hand,

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learned counsel for respondent discloses that by the time the appellant was arrested, limitation to file appeal had already expired and that the filing of true copy of plaint with the present appeal clearly shows that summons were served on the appellant and in any case, no such ground was taken by the appellant in his application under Order IX Rule 13 CPC.

6. The undisputed propositions of law, as culled out of various judicial precedents are as follows. The condonation of delay cannot be a matter of course and the same is a matter of discretion of the court to be exercised in a judicious manner. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third party rights had become embedded during the interregnum, courts should lean in favour of condonation. Not the length of delay but the credibility of the explanation offered is the relevant factor where the delay is not inordinate. The expression “sufficient cause” used in Section 5 of the Limitation Act must receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafides is imputable to a party. The sufficiency or otherwise of the cause set up by the applicant in such cases has to be tested by examining as to whether the applicant was prevented from filing the appeal within time by factors beyond his control.

6.1 In the case of ***Ramlal vs Rewa Coalfields Ltd.***, AIR 1962 SC 361, the Hon'ble Supreme Court of India observed thus :

“7. In construing Section 5(of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration

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mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27.

28. *The concepts such as “liberal approach”, “justice oriented approach” and “substantial justice” cannot be employed to jettison the substantial law of limitation. Especially in cases where the court concludes that there is no justification of the delay....”*

(emphasis supplied)

6.5 In the expressions of this Court in the case of ***Shubhra Chit Fund Pvt. Ltd. vs Sudhir Kumar***, 112 (2004) DLT 609, too much latitude and leniency will make provisions of the Limitation Act otiose, which approach must be eschewed by courts. In the case of ***Union of India vs C.L. Jain Woolen Mills Pvt. Ltd.***, 131 (2006) DLT 360, one of the arguments of the applicant Union of India seeking condonation of delay in filing the appeal was that the power to condone delay has been conferred to do substantial justice and the court should adopt a liberal approach and the delay resulting from official procedures should normally be condoned. This Court rejected the argument, placing reliance on the judgment in the case of ***P.K. Ramachandran*** and observed that although the provisions under Section 5 Limitation Act have to receive liberal construction, but the court cannot ignore the fact that where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner without disclosure of good and a sufficient cause for condonation of delay.



7. Falling back to the present case, as regards information about passing of the impugned judgment and decree dated 11.04.2018, according to the appellants' own case, they came to know about the same for the first time five days prior to the date fixed i.e. 31.05.2019 before the Execution Court. Despite that, they preferred the present appeal belatedly only on 26.07.2023. And there is no whisper of explanation for this four years period of delay.

8. So far as the illness of appellant no. 2 is concerned, the only submission advanced is that she was suffering from pain due to stone in gall bladder. No further details have been specified in the application, especially regarding the period of the alleged illness. No medical record also has been filed. However, from copy of order dated 02.05.2023 of the learned trial court (*pdf 170 of paperbook*), whereby application of the appellants under Order XXXVII Rule 4 read with Order IX Rule 13 CPC was dismissed, it appears that the alleged pain due to gall bladder stones occurred on 09.05.2019 only. Subsequent to 09.05.2019, there is not even a shred of any medical record of appellant no. 2 which could be cited as an explanation of delay in filing the appeal.

9. Coming to the grounds not pleaded in the application, but raised today during arguments, admittedly, the appellant no. 1 got arrested on 04.10.2018 whereas the period of limitation to file the appeal had already expired by 10.07.2018. That being so, arrest of appellant no. 1 cannot help the appellants on the issue of condonation of delay in filing the appeal. As regards service of summons also, admittedly the copy of plaint filed with the



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present appeal is not the *Certified Copy* but a “*True Copy*” and it is nobody’s case that the said true copy of plaint was supplied to the appellant at some subsequent stage. That being so, it does not appear believable that the appellant was not served with summons of the suit.

10. I am not satisfied that the appellants were precluded from filing the appeal by any circumstance beyond their control. The appellants have failed to set up sufficient cause required to condone this inordinate delay of more than five years in filing the appeal. Therefore, the application under consideration is dismissed.

RFA 665/2023 & CM APPL. 42626/2023 (stay)

11. Consequently, the appeal is dismissed as time barred and the pending application stand disposed of.

**GIRISH
KATHPALIA**

**GIRISH KATHPALIA
JUDGE**

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Click here to check corrigendum, if any