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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **EX.F.A. 2/2024 & CM APPL. 2166-2168/2024****POONAM SAREEN** Appellant

Through: Mr. Arun Panwar, Adv.

versus

MS UNLIMITED RESOURCES AND ORS Respondents

Through: None

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**% **12.01.2024**

1. This appeal is directed against order dated 29 March 2023, passed by the learned Administrative Civil Judge (the learned ACJ) in Execution 134/2015, whereby the objections filed by the Respondents 4 and 5 under Order XXI Rule 23 of the CPC were allowed and the execution petition was dismissed.

2. The execution petition sought execution of an *ex parte* decree dated 1 September 2001, whereunder the respondents, as the judgment debtors, were directed to pay ₹ 2,07,220/- along with interest @ 18 % per annum from 1 January 1996 to 31 October 1998, with future interest from the date of filing of the suit till realization.

3. The execution petition was filed more than 14 years and two months after the decree was passed, on 18 November 2015. The objections were accompanied by two applications, one under Section

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5¹ and the second under Section 14(2)² of the Limitation Act, 1963.

4. The application under Section 5 of the Limitation Act sought condonation of delay in filing the appeal on the ground that the counsel for the appellant never informed the appellant of the passing of the *ex parte* decree on 1 September 2001 and it was only 10 years and two months thereafter that, on 16 November 2011, the incomplete file of the case was handed returned by the clerk of the appellant's counsel to the husband of the appellant.

5. Para 2 of the impugned order records a further averment, of the appellant, that the appellant's counsel had addressed a letter to the appellant's husband, in which he had said that he could not assist the appellant or her husband owing to his having suffered an accident, in pursuing the case or in informing the appellant about the fate of the case. However, I do not find any such reference in the application filed by the appellant under Section 5 of the Limitation Act, which has been placed on record. In any event, no such letter is forthcoming on the record of the present appeal.

6. The learned ACJ has rejected the application for condonation of delay, on various grounds, viz. that

¹ **5. Extension of prescribed period in certain cases.** —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

² **14. Exclusion of time of proceeding bona fide in court without jurisdiction---**

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in



- (i) there was no reference, in the execution petition, or in the application seeking condonation of delay, to any complaint having been instituted by the appellant against its counsel owing to the lapse of the counsel in informing the appellant about the fate of the case for over 10 years after the suit was decreed,
- (ii) no medical document, substantiating the assertion that the counsel for the appellant was unable to prosecute the matter owing to ill-health, was forthcoming,
- (iii) no document, whatsoever, was filed by the appellant, to substantiate its application for condonation of delay, and only an affidavit in evidence was placed on record,
- (iv) thus, the allegations against the appellant's counsel were found to be unsubstantiated by any evidence whatsoever, and
- (v) there was nothing forthcoming to indicate that, for 10 years after the suit had been decreed, any effort was made by the appellant or her husband to contact the counsel and ascertain the outcome of the case.

7. The assertions and allegations on the basis of which the appellant sought condonation of delay were, therefore, found to be unsubstantiated by any evidentiary material.

8. Further, the learned ACJ holds, in the impugned order, that the Limitation Act did not provide for condonation of delay in filing an execution petition. In fact, Section 5 of the Limitation Act specifically



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excludes execution petitions from its ambit.

9. Section 14(2) was also held to be inapplicable, as the provision applies only where the applicant has been diligently prosecuting the matter before a wrong forum. That was not the case in the present instance.

10. There is clearly no infirmity in the order and Mr. Arun Panwar, learned Counsel for the appellant is also unable to point out any error therein. He only submits that there is a possibility of settlement of the dispute if the court issues notice.

11. That, in my view, cannot be a ground to entertain the present appeal if it is otherwise completely bereft of merits.

12. The impugned order dated 29 March 2023 is unexceptionable in law. There is, in fact, no provision for condonation of delay in filing execution petitions in view of the exception specifically carved out in Section 5 of the Limitation Act to applications under Order XXI of the CPC. That apart, even on merits, there is no cause to interfere with the findings of the learned ACJ that no material justifying condonation of delay was forthcoming.

13. The observations of the learned ACJ in that regard, which I have already noted hereinabove, commend themselves entirely to acceptance.



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14. Equally, the learned ACJ is correct in his finding that Section 14 of the Limitation Act was also inapplicable as this is not a case in which the appellant was prosecuting the matter before a wrong forum.

15. For the aforesaid reasons, the impugned order does not suffer from any infirmity either on facts or in law as would justify issuance of notice in this appeal.

16. The appeal is accordingly dismissed *in limine*.

C. HARI SHANKAR, J.

JANUARY 12, 2024/dsn

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

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