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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 08th October, 2024***

+ **FAO 324/2024**
SH. BRIJ MOHAN SINGH

.....Appellant

Through: Mr. Mayank Arora, Advocate along
with appellant-in-person.

versus

SMT. INDERJEET KAUR

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

CM APPL. 59317/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

FAO 324/2024 & CM APPL. 59316/2024 (under Section 5 of Limitation Act for condonation of delay)

1. The appellant is plaintiff before the learned Trial Court and has filed a suit seeking possession and recovery of arrears of rent, damages/mesne profits.
2. During the pendency of the above said suit, the appellant moved an application under Order XXXIX Rule 10 CPC and keeping in mind the stand taken by the defendant who had even denied relationship of landlord and tenant between the parties, the learned Trial Court dismissed the above said application vide order dated 20th March, 2019.



3. Obviously, the above said order has now been challenged, after more than five years.
4. There is an application moved under Section 5 of Limitation Act for condonation of delay in filing the appeal.
5. Unfortunately, such application does not disclose any cause, much less a compelling one, which may persuade this Court to condone the delay.
6. It has been baldly averred in the application that the plaintiff had been following up the matter with his counsel but the real facts were never mentioned to him by his counsel. Relevant paras of said application read as under:-

“2. That it is submitted that the appellant has been following up with the counsel regarding the proceedings of the matter but he had never been disclosing the real facts to the appellant.

3. That despite several efforts, the said counsel did not disclosed any fact regarding the application U/o 39 Rule 10 CPC, the appellant felt suspicious and engaged a new counsel.

4. That the new counsel applied for the certified and after going through the file came to know that the application U/o 39 Rule 10 CPC filed by the appellant has been dismissed vide order dated 20.03.2019.

5. That further the delay was caused in discussing of the true facts with the new counsel and preparation of the appeal and the delay was caused due to said sole reason and the application could not be filed in stipulated time.”

7. When asked whether any complaint of any kind had been made against his such pervious counsel, the answer was in negative.
8. According to plaintiff/appellant, he engaged a new counsel who when went through the various previous orders, it came to fore that the above said application had been dismissed and, therefore, the delay should be condoned as it was not on account of any inaction on the part of the plaintiff.
9. Though, generally, the endeavour of this Court is to ensure that the matter is disposed of on merits, instead of on technicalities and though delay,



wherever some genuine cause is shown, is condoned but in the case in hand, the delay is of more than five and half years and no compelling reason has been assigned as to why the Court should condone the delay and should entertain the appeal.

10. Reference be made to *Basawaraj and Anr. vs. Special Land Acquisition Officer (2013) 14 SCC 81* wherein the Hon'ble Supreme Court held that the discretion to condone the delay is required to be exercised judiciously, taking into account the particular facts and circumstances of each case. The phrase "sufficient cause", as it appears in Section 5 of Limitation Act, cannot be liberally interpreted if negligence, inaction or lack of *bonafide* is writ large. It was also noted that though limitation may harshly affect the rights of the parties, it has to be enforced with all its rigour in accordance with statute as no such power vests with the Court to extend the period of limitation on equitable grounds. Relevant paras of above said judgment read as under:-

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

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15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and



circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

11. The case is, reportedly, at the stage of PE and it will be appropriate for plaintiff to rather pursue his such suit with all due diligence.
12. Needless to say, in case, eventually, he is able to establish the relationship of landlord and tenant between the parties, not only possession, he might be in a position to, even, seek recovery of the entire arrears as the order which is, generally, passed by taking recourse to provision contained under Order XXXIX Rule 10 CPC is interim in nature and is merely passed after appreciating the stand taken by the parties in their respective pleadings.
13. The things can always change after the evidence is led by the parties.
14. Be that as it may, in view of the aforesaid peculiar situation, this Court does not find any reason to entertain the appeal which is highly belated in nature.
15. Accordingly, application moved under Section 5 of Limitation Act is dismissed and, resultantly, the appeal also stands dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 8, 2024/ss