



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

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*Judgment reserved on: 24.05.2024*

*Judgment pronounced on: 27.05.2024*

+ CM(M) 1341/2018, CM APPL. 45978/2018—stay

RANBIR SINGH

..... Petitioner

Through: Mr. Sanjeev Soni, Adv.

versus

PERVESH GAUR @ TINKU & ORS

..... Respondents

Through: Mr. Medhanshu Tripathi, Adv. for R-1 to 3.

Ms. Aditi Saraswat, Adv. for Mr. Jawahar Raja, ASC for GNCTD/R-5 to 7.

**CORAM:**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

### **J U D G M E N T**

1. Vide the present petition, the petitioner has invoked the supervisory jurisdiction of this court vested under Article 227 of the Constitution of India read with Section 151 of Code of Civil Procedure, 1908 ("CPC") impugning the order dated 13.08.2018 passed by the learned Additional District Judge-05, South, Saket Courts, New Delhi ("ADJ") in appeal bearing no. MCA No. 2066/2016 titled as "*Pravesh Gaur vs Ranvir Singh*". The said appeal was partly allowed, which had arisen out of the order of the Learned Senior Civil Judge-cum-RC, South, Saket Courts, New Delhi ("Senior Civil Judge") in CS SCJ No. 82503/16 pending before it. Further,



the petitioner is seeking restoration of order of injunction order dated 04.10.2016 passed by the learned Senior Civil Judge in the pending suit.

2. Briefly stated, the petitioner on 20.11.2012 filed a suit for permanent and mandatory injunction before the Learned Senior Civil Judge, seeking to restrain the respondent no. 1 to 3 (“answering respondents”), who are brothers, from raising any unauthorized construction upon the private passage of the petitioner. Other defendants no. 4 to 7 in the said suit are South Delhi Municipal Corporation (“SDMC”), Commission of Police, SHO of P.S. Vasant Vihar and the Director, Delhi Fire Services, respectively. The petitioner impleaded the respondents 4 to 7 as there was an alleged dereliction of duty on their part *vis a vis* the illegal construction raised by the respondents no. 1 to 3.

3. In the aforementioned suit, the petitioner also preferred an application under Order XXXIX Rule 1 & 2 read with Section 151 CPC seeking grant of ad-interim ex-parte injunction against the answering respondents on 17.05.2013.

4. The learned Senior Civil Judge dismissed the aforesaid application of the petitioner vide order dated 17.05.2013. The petitioner therefore preferred an appeal against the said order before the Learned District Judge along with an application under Order XLI Rule 5 read with Section 151 CPC. The Learned District Judge vide order dated 17.09.2013, disposed off the appeal directing the learned Senior Civil Judge to decide afresh the said application of the petitioner under Order XXXIX Rule 1 & 2. Thereafter, the learned Senior Civil Judge, in compliance of the said order, reconsidered and



allowed the petitioner's application under Order XXXIX Rule 1 & 2 CPC vide order dated 04.10.2016. Dissatisfied by the same, the respondent no. 1 preferred an appeal against the petitioner impugning the said order before the first Appellate Court and the learned ADJ vide the impugned order dated 13.08.2018, partly allowed the appeal of the respondent no. 1. Thus, the present petition came to be filed by the petitioner being aggrieved by the passing of the order dated 13.08.2018 raising several objections to the passing of the impugned order.

5. At the outset, learned Counsel for the petitioner submitted that the Learned ADJ has gravely erred in passing the impugned order as the appeal preferred by the respondent was indeed time barred. Further, no application was moved on behalf of the respondent no. 1 seeking condonation of delay along with the appeal and it was only after the petitioner raising an objection, an application seeking condonation of delay was moved nearly 11 months after the filing of the appeal.

6. Learned Counsel further contended that the learned ADJ overlooked the application and without disposing the application under Section 5 of the Limitation Act, had decided the appeal on merits. Therefore, on face of it, the impugned order is patently perverse and illegal and cannot be sustained. It was additionally submitted in the civil suit in question bearing no. CS SCJ 82503/16 titled as "*Ranbir Singh vs Pervesh Gaur & Ors.*" before the learned Senior Civil Judge, there were 7 defendants in total, out of which SDMC was one of the necessary parties being arrayed as defendant no. 5. However, while preferring the appeal before the Learned ADJ, respondent



no.1 did not array respondent no. 4 to 7 including SDMC as parties, the fact which has been also overlooked by the learned ADJ and the impugned order has been passed. Therefore, the impugned order is liable to be set aside and the case be remanded back to the learned ADJ to decide the appeal afresh, first adjudicating upon the application seeking condonation of delay in filing the appeal and subsequently proceeding ahead with the appeal, subject to outcome of the said application.

7. To support the contention, relied upon the following judgements:

- *Didar Singh vs Nirmal Singh & Ors* (2007) 4 PLR 552 [Para 9]
- *Malik Chand vs Zubeda Begum and Ors* ILR 1974 Delhi 160

8. To controvert the submissions of the petitioner, learned counsel for respondents nos. 1 to 3 submitted that in fact the appeal was preferred within the period of limitation and there was no requirement to file an application seeking condonation of delay. However, to avoid any controversy, an application was moved seeking condonation of delay of 3 days which has been well explained with reasons outlined in the said application itself such as delay in obtaining the certified copies of the order dated 04.10.2016 which were received on 10.11.2016, the death of respondent no.1's mother; to perform the last rites and the holidays on 12<sup>th</sup> and 13<sup>th</sup> December, 2016 being Saturday and Sunday. Therefore, delay for 3 days were sufficiently explained.

9. Learned Counsel further submitted that the learned ADJ had considered the record and had found that the appeal was within the period of limitation and thereby implying that the application seeking condonation of



delay had been disposed of. Further, by virtue of the application under Order XLI Rule 5, the respondents no. 1, 2 & 3 have been arrayed as parties which has been allowed by the court. Therefore, there is no illegality by not impleading the respondents no. 4-7 in the first appeal before the Ld. ADJ. Moreover, the respondents no. 4 to 7 were not party before the learned ADJ but they have been arrayed by the petitioner in the present petition before this court.

10. Having considered the above, there is nothing on record to show that the first appellate court has considered the application seeking condonation of delay in filing the appeal before it. It appears that the said application has been overlooked and without passing any orders on the application seeking condonation of the delay, the appeal has been disposed of.

11. Hence, the learned ADJ could not have disposed of the appeal without considering the issue of delay and whether it was to be condoned or not.

12. In view of the above, the impugned order dated 13.08.2018 is set aside and is remanded back to the learned First Appellate Court to hear arguments of both the parties to consider the application seeking condonation of delay and dispose of the appeal within a period of 2 months from today.

13. Accordingly, petition is allowed and the pending application stands disposed of.

**SHALINDER KAUR, J.**

**MAY 27, 2024/ab**