

(2004) 09 DEL CK 0174

In the Delhi High Court

Case No : CM (M) 716 of 2004 and CM Application 6927 of 2004

Mirza

APPELLANT

Vs

Rajinder Kumar Saini and Others

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Constitution of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 14(1)
Limitation Act, 1963 — Section 5

Citation : (2004) 114 DLT 211 : (2004) 77 DRJ 174

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Suresh Gupta and Lalit Gupta, for the Appellant; R.K.Jain, for the Respondent

Judgement

R.S. Sodhi, J.—CM(M) 716/2004 is directed against the order dated 17th March, 2004, of the Additional Rent Control Tribunal (for short "the Tribunal") in RCA No.498/2003, whereby the Tribunal has dismissed the application of the appellant herein for condensation of delay in filing the appeal against the order dated 16th May, 2003, whereby an order is passed on the ground of second default in the proceedings u/s 14(1)(a) of the Delhi Rent Control Act.

2. The brief facts of this case as has been noted by the Tribunal are as under :

".....appeal against the impugned order dated 16.5.2003 was filed on 7.7.2003 Along with an application seeking condensation of delay. The impugned order is passed on the ground of second default in the proceedings u/s 14(1)(a) of the DRC Act.

2. As per the endorsement of the Copying Agency on the certified copy, an application, an application for taking certified copy was made on 27.5.2003. The same was ready for being delivered and collected on 5.6.2003. Admittedly, the appeal could have been presented on the date of re-opening of the Civil Subordinate Courts which, as per the Calendar for 2003, remained closed for

summer vacations from Friday, 6th June, 2003 to Monday, 30th June, 2003 (both days inclusive).

3. In the application, seeking condensation of delay, it is stated that the clerk of the counsel left for his native village on 4.6.2003 and came back only on 1.7.2003 and the certified copy was obtained and on 1.7.2003 the trial court record was inspected and 3-4 days were taken in preferring the appeal. Along with the application, there is an affidavit of Shri Mirza, the appellant."

3. Counsel for the petitioner refers to a judgment of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , wherein the Supreme Court has directed that a justice-oriented approach is to be taken while interpreting the sufficient cause in Section 5 of the Limitation Act. It has also given various directions which make it incumbent upon subordinate courts to ensure that in the interest of justice the matters are not dismissed on technical grounds but must be disposed of on merits.

4. Counsel for the respondent on the other hand contends that the present petition before this court is under Article 227 of the Constitution of India and scope of this court is very narrow and limited as has been held by the Supreme Court in Bhojraj Kunwarji Oil Mill and Ginning Factory and Another Vs. Yograjsinha Shankarsinha Parihar and Others, , Mohd. Yunus Vs. Mohd. Mustaqim and Others, and India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, . Counsel points out that the Supreme Court in no uncertain terms has made it clear that the High Court's power of superintendence cannot be invoked to correct the error of fact or even of law. He submits that what is to be seen by the High Court is that whether the subordinate court has acted within jurisdiction or not.

5. Heard counsel for the parties and have perused the judgment under challenge as also the judgments of the Supreme Court. No doubt there are limitations in the exercise of jurisdiction by High Court under Article 227 of the Constitution of India. The Supreme Court does not bar jurisdiction of the High Court to take action where it so requires, however it cautions the limits of its exercise of power. In the present case, I find that the Tribunal has in a most slip shod manner dismissed the application for condensation of delay and thereby put an end to a valuable right of the appellant of first appeal. This error must be corrected and set right in view of the judgment of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . I see no justification in not interfering in the matter in setting right and implement the law as has been set out in the judgment of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . It is the duty of the courts to implement the laws interpreted by the Supreme Court.

6. Having carefully examined the case in hand, I am of the view that the Explanation given by the appellant in the application for condensation of delay was sufficient and ought to have been accepted. I Therefore set aside the order

under challenge and remand the matter to the Tribunal to be tried in accordance with law. CM(M) 716/2004 and CM APPL.6927/2004 are accordingly disposed of. Parties to appears before the Tribunal on 28th September, 2004.