

(2018) 01 DEL CK 0381

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 34 Of 2017

Neeta Aggarwal

APPELLANT

Vs

Shashi Jindal

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 5 Rule 2, Order 41 Rule 14, Order 41 Rule 22

Citation : (2018) 01 DEL CK 0381

Hon'ble Judges : Siddharth Mridul, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Sudhir K. Makkar, Meenakshi Singh, Ridhi Munjal, Saumya Gupta, Sudhanshu Suman, Lalit Gupta, Siddharth

Judgement

Siddharth Mridul, J

CM No. 1978/2018 (for condonation of delay of 10 days in filing reply of CM No. 45475/2017)

1. The present application has been instituted on behalf of the appellant seeking condonation of delay of about 10 days in filing the reply to the application seeking condonation of delay filed by the respondent, and a direction that the same be taken on record.
2. Notice. Mr. Gupta, learned counsel appearing on behalf of the respondent accepts notice.
3. Although a perusal of the averments made in the application reflects that the condonation is sought on the ground that the reply could not be filed within time due to unavoidable reasons, which to say the least, are vague and nebulous, we are of the view that in the interest of justice, the same ought to be condoned.
4. The application is allowed.
5. The delay of 10 days in filing reply to the application seeking condonation of delay, filed by the respondent, is condoned and the same is directed to be taken

on record.

6. The application is disposed off.

CM No. 45475/2017 (for condonation of delay and appropriate directions regarding limitation in filing of the cross objections bearing CM No. 44726/2017) & C.M. No. 44726/2017 (cross objections on behalf of respondent)

1. The present application has been instituted on behalf of the respondent praying as follows:-

"(a) Hold that there is no delay in filing of the Cross Objections bearing CM No. 44726 of 2017 and if it is held otherwise, this Hon"ble Court may grant suitable directions and condone the delay of around 80 days in filing of the Cross Objections bearing CM No. 44726 of 2017, and decide the Cross Objections bearing CM No. 44726 of 2017, filed by the Respondent in the present appeal, on merits; and

(b) Pass any other and further order (s) as this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The facts as are relevant for the adjudication of the present application are adumbrated hereinbelow:-

a) Aggrieved by the impugned judgment and decree dated 23.03.2017, corrected and released on the 02.05.2017 in CS(OS) No.325/2016, titled as "Shashi Jindal vs. Neeta Aggarwal", the appellant instituted the present regular first appeal. The same came to be listed in the first instance on the 29.05.2017 when it was pointed out by the learned counsel appearing on behalf of the appellant that the other side has also filed an appeal against the said impugned order which is yet to be listed. The matter came to be adjourned to the 18.08.2017.

b) On the 18.08.2017, this Court was informed by counsel for the appellant that the issue involved in the matter was likely to be resolved. The matter was therefore renotified for the 18.09.2017.

c) On the 18.09.2017, whilst issuing the notice returnable on 17.01.2018, this Court, on the statement of the learned counsel for the parties, referred the matter to the Delhi High Court Mediation and Conciliation Centre to enable the parties to arrive at an amicable resolution of the underlying dispute.

d) On the 06.10.2017, learned counsel appearing on behalf of the respondent addressed a mail to learned counsel appearing on behalf of the appellant, asking the latter to provide the former with a complete set of the paper book of the subject appeal, as early as possible, so as to enable them to take further steps in the matter.

e) It is an admitted position that, although learned counsel appearing on behalf of the appellant does not deny receipt of the aforesaid mail dated 06.10.2017, no reply was sent thereto. However, a copy of the appeal paper book was provided

to counsel for the respondent on the 08.11.2017.

f) The cross objections came to be filed on behalf of the respondent on 07.12.2017.

3. Although detailed arguments have been addressed by learned counsel appearing on behalf of the parties, the issues that came up for consideration in the present application relate to the interpretation of Order XLI of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") and in particular, Rules 14 and 22 thereof, which are reproduced hereunder for the sake of felicity:-

"14. Publication and service of notice of day for hearing appeal.-

(1) Notice of the day fixed under Rule 12 shall be affixed in the Appellate Court house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Appellate Court may itself cause notice to be served.- Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it."

"22. Upon hearing respondent may object to decree as if he had preferred separate appeal.-

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

[Explanation.- A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2) Form of objection and provisions applicable thereto.- Such cross-objection shall be in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) [***]

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule."

4. A plain reading of the above provisions would reveal that in the event, the Court issues notice of an appeal, the same is required to be served on the respondent or on his pleader in the manner so provided for the service of a summon on a defendant to appear and answer; and all the provisions applicable to such summons; and to proceedings with reference to the service thereof, apply mutatis mundis to the service of such notice. It further provides that the notice to be served on the respondent is required to be accompanied by a copy of the memorandum of appeal. Furthermore, a respondent may take any cross-objections to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

5. Learned counsel appearing on behalf of the respondent states that although they entered appearance before this Court on 18.09.2017, they were neither on caveat nor was the appeal argued on merits, including for the purposes of an interim order and same was never ordered by this Court to be heard finally on a date fixed in this behalf, in their presence.

6. Learned Counsel for the respondent would further submit that in view of the circumstance that they were finally served with a copy of appeal paper book only on 08.11.2017, the cross objections instituted on their behalf are within time. In any event, by way of abundant caution, it has been urged that if this Court were to come to a conclusion that the filing of the cross objections is belated, the delay in so filing them must be condoned and they be granted leave to place the same on record.

7. On the contrary, Mr. Sudhir Makkar, learned Senior counsel appearing on behalf of the appellant would urge that since the respondent on notice of the appeal has appeared, as far back as on 18.09.2017 when the parties were referred to mediation, the cross objections have been filed beyond the period of 30 days as provided in terms of the Order XLI Rule 22 CPC.

8. Mr. Makkar, learned senior counsel would further invite our attention to the legal notices dated 28.10.2017 and 28.11.2017 to urge that in fact, the respondent had the complete appeal paper book with her, which was also supplied to a tenant, namely, M/s Select Ventures Private Limited, as is evident from the said communications. In other words, it has been urged on behalf of the appellant that there has been sufficient compliance with the mandatory requirements of Rule 14 of Order XLI CPC and the cross objections being beyond the period prescribed within the provisions of Order XLI Rule 22 CPC, be not allowed.

9. Reliance is also placed on the following decisions by the learned counsel appearing on behalf of the parties in support of their contentions:-

1. Mahadev Govind Gharge and Ors. vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka reported as AIR 2011 SC 2439;

2. M.Kr.Rm Ramaswami Chettiar vs. Om.Pl.Rm. Ramanathan Chettiar in SA No. 1918/1964 dated 01.11.1968, rendered by a learned Single Judge of the High Court of Madras;

3. Mahanagar Telephone Nigam Limited vs. Applied Electronics Ltd. reported as AIR 2014 Del 182;

4. Union of India vs. Jagtar Singh reported as 1979 (2) ILR (Del) 327; and

5. UOI vs.Jhutter Singh reported as (1992) 46 DLT 364.

10. Having heard learned counsel appearing on behalf of the parties and given our consideration to the judicial precedents mentioned hereinabove, we are of the view that the cross objections filed on behalf of the respondent deserved to be dealt with, on their merits.

11. From a conjoint reading of the judicial principles governing the institution of cross objections, the following legal position emerges:-

a) The relevant Rules contemplate that a notice of the admission of an appeal is required to be served on the respondent or on his Advocate, informing the latter about the date fixed for the hearing of the appeal, and the same are required to be mandatorily accompanied by a copy of the memorandum of the appeal.

b) The service of the notice of the date of hearing is not a mere formality informing the respondent of the date alone, but also as to the effect of informing the scope of the appeal, enabling the respondent to determine whether to institute cross objections thereto, or not.

c) The service of the copy of the memorandum of appeal is also requisite, in order to facilitate the determination by the respondent in relation to the institution of cross objections.

d) The above requirements are in terms of the provisions of Order V Rule 2 CPC, which deal with the service of summons on a defendant in a suit and serve a similar purpose.

e) The requirement of being informed of the date fixed for hearing of the appeal is clearly stipulated in the instant Rule. The hearing contemplated thereunder is normally the final hearing of the appeal itself, although it permits some exceptions.

f) The exceptions carved out are in the event of the respondent appearing on caveat or putting in appearance and arguing the appeal on merits including for the purpose of an interim order and where the appeal is directed to be heard finally on a date fixed for the said purpose in his presence.

g) The date of the service of the copy of the memorandum of appeal is germane and relevant for the purpose of calculating the period of limitation in relation to the institution of cross objections, a fortiori for the reasons that it is only after receipt thereof, that the respondent has the opportunity to elect and determine whether he would like to file cross objections or not.

h) If the cross objector is able to demonstrate sufficient cause for the delay in filing cross objections beyond the statutory period of one month, the courts in the interest of justice would normally be inclined to condone the delay since the provisions of Order XLI Rule 22 CPC itself provide for extension of time.

12. In the present case, the respondent was served with a copy of the memorandum of appeal on 08.11.2017, and the assertion that he had a copy thereof prior to that is specious.

13. Therefore, in view of our determination that the service of a memorandum of appeal in terms of Order XLI Rule 14 of CPC is mandatory and salutary for the purpose of reckoning the period within which the respondent may file cross objections to the appeal, we are of the view that the cross objections have been filed by the respondent within time.

14. The contention advanced on behalf of the appellant that since the respondent on notice of filing of the appeal had appeared on 18.09.2017, the period of one month to file cross objections would reckon therefrom; if accepted, would render the instant Rules an idle formality and cause serious prejudice to the interests of the parties in the administration of justice.

15. Our view is further buttressed by the dictum of law as laid down in *Emperor vs. Khwaja Nazir Ahmed* reported as (1945) 47 BOM LR 1245, wherein it was held that if a statute provides for the act to be done in a particular manner, it must be done in that manner and no other.

16. For the foregoing reasons, we are of the considered view that the cross objections filed on behalf of the respondent are required to be taken into consideration along with the appeal instituted on behalf of the appellant against the impugned judgment and decree dated 23.03.2011.

17. It is, however, incumbent upon us to state that even otherwise, for the reasons stated on behalf of the respondent in the application explaining the delay in filing the cross objections, we are satisfied that sufficient cause exists to condone the delay in the interest of justice.

Application stands disposed off accordingly.

RFA(OS) 34/2017 & C.M. No. 44727/2017 (Stay)

Issue notice. Learned counsel appearing on behalf of the non-applicant accepts notice and prays for time to file the reply.

Let the reply, if any, be filed within two weeks from today and rejoinder thereto, if any, be filed within one week thereafter.

Learned counsel appearing on behalf of the parties state that they shall make a joint request before the executing Court to adjourn the matter beyond the next date of hearing in the present appeal.

List on 16.04.2018.