

(1992) 02 DEL CK 0005

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 1179 of 1991 and Regular Second Appeal No. 49 of 1991

Ram Das Chela of Late Mahant Net Ram

APPELLANT

Vs

Thakur Dwara Radha Kishan Society

RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149
Limitation Act, 1963 — Section 5

Citation : (1992) 46 DLT 559

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : V.K. Makhija, W. Singh and Mukul Gupta, for the Appellant;

Judgement

P.N. Nag, J.

(1) Counsel for the parties state that the notice has only been issued in the application u/s 5 of the Limitation Act, i.e., in Cm 1179/91 and not in Cm 1180/91 which is an application for stay.

(2) So far as Cm 1179/91 is concerned, pleadings are complete.

(3) This is an application u/s 5 of the Limitation Act for condensation of delay in filing the appeal. The ground on which the condensation of delay has been prayed for is that due to oversight of Counsel for the appellant, the Court fees could not be affixed on the appeal with the result the appeal was returned with office objection that the same was time barred and thereafter the Court fee stamp was affixed. Therefore, there was a bonafide mistake in not affixing the Court fees initially, which was filed subsequently.

(4) Although, no details and particulars have been given in this application by the applicant explaining the delay, but, from the reply, filed on behalf of the respondent to this application and the rejoinder, the facts have become clear. I have also seen the office objections, which are available on the file.

(5) Mr. Wazir Singh, learned Counsel for the respondent has vehemently opposed this application and submitted time and again that in spite of office objections raised by the Registry that the appeal is time barred for non-payment of the Court fees, the appellant did not affix the necessary Court fees on the memorandum of appeal or on the certified copies of the decree and the impugned order of the Courts below. According to him, Counsel for the appellant has been negligent in not doing so and, Therefore, this should not be construed as sufficient cause for condoning the delay in filing the appeal and, Therefore, the application merits dismissal.

(6) The contention of the learned Counsel for the respondent is wholly unacceptable. No doubt, the appellant was duty bound to affix Court fees on the memorandum of appeal and file the appeal complete in all respects within the period of limitation. That is why he has filed an application for condensation of delay. I find from the office objections that one of the objection raised by the office is that the appeal has become time barred as the impugned order and decree were not stamped at the time of initial filing but no objection has been raised by the office that the memorandum of appeal has not been properly stamped At any rate. the Court fees has now been affixed and the appeal has been filed after removing all objections on 24.7.1991. It appears from the affidavits filed on behalf of the appellant that Counsel was instructed by the appellant to file a valid appeal, complete in all respects, before the Court within time but due to some oversight on the part of Counsel the memorandum of appeal was filed within time but without proper Court fees On account of the negligence of Counsel, the appellant cannot be penalised and this itself is sufficient cause for condensation of delay. Even otherwise, this case has to be considered not in the context of sufficient cause for condensation of delay u/s 5 of the Limitation Act. but, it should be considered in the background of whether the Court should extend the time u/s 149 of the CPC in the facts and circumstances of this case for payment of Court fees. In the facts and circumstances of the present case, in my opinion delay in payment of Court fees required to be condoned as it is settled law that the Court should apply a more liberal test and condone the delay in re-presentation of the papers. In Civil Appeal No. 3159/91 (Dharshan Singh Narula v. Surinder Singh Narula and Others) decided on 19th August, 1991, the Supreme Court has observed " ..the High Court applied the wrong test in deciding the matter when it examined the sufficiency of cause for the delay u/s 5 of the Limitation Act instead of considering whether the power of the Court to extend time u/s 149, Civil Procedure Code, could in the circumstances of the case, be justifiably invoked by the appellant."

(7) The delay in filing the appeal is, Therefore, condoned.

(8) Cm is disposed of. Rs A 49191 & Cm 1180191

(9) To be listed on 13th May, 1992.