
(2010) 07 DEL CK 0104

In the Delhi High Court

Case No : Regular First Appeal 57 of 2009

Surya Kiran Maintenance Society

APPELLANT

Vs

Shri Shiv Sharma and Another

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2010) 07 DEL CK 0104

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Divya Jain, for the Appellant; Kanwaljit Singh, proxy counsel, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.

CM. No. 2800/2009

1. This is an application filed by the appellant u/s 5 of the Limitation Act seeking condonation of delay of 605 days in filing the present appeal.

2. The appellant had filed a suit for recovery against the respondents which was dismissed by a judgment and decree dated 13.3.2007. It is pointed out by counsel for the appellant that defendant No. 1 (respondent No. 1 in the appeal) did not appear before the trial court. The suit was contested by defendant No. 2 (respondent No. 2 herein Bank of Baroda). In the appeal also respondent No. 1 is not represented.

3. Counsel for the appellant submits that the certified copy of the judgment and decree dated 13.3.2007 was obtained on 19.3.2007. While relying on para 3 of the application counsel for the appellant submits that the appellant took time in deciding whether appeal is to be filed or not. She submits that no final decision could be taken until mid January, 2008. She submits that only on 15.1.2008,

counsel was requested by a letter dated 15.1.2008 to prepare the appeal and send the same to them. Copy of the communication received by the counsel has been annexed along with the application as annexure 'A'. She submits that thereafter the appeal could not be filed as the counsel who was looking after the matter had left for London in early February of 2008. Thereafter a reminder was issued by the appellant to the counsel on 28.4.2008 whereafter the counsel started searching for the file which had apparently got misplaced during shifting of the office of the advocate in the month of May-June, 2008. It is submitted that files were only traced in December, 2008 and thereafter the appeal was filed on 10.2.2009. It is contended that the delay in filing the appeal was for bona fide and reasons beyond the control of the appellant.

4. The application for condonation of delay is opposed by the counsel for respondent No. 2 on the ground that the delay was caused on account of inaction and negligence on the part of the appellant. It is submitted that the judgment and decree was obtained on 19.3.2007 and para 3 of the application shows that from March, 2007 upto January, 2008, the appellant was not sure as to whether an appeal was to be filed or not and it was during this period that the limitation for filing the appeal expired. It is contended that there is no satisfactory explanation as to why appellant took so long in deciding whether the appeal was to be filed or not.

5. I have heard Learned Counsel for the parties and perused the application for condonation of delay as also the annexures filed along with the application. Admittedly the suit of the appellant was dismissed by judgment and decree dated 13.3.2007. The certified copy was obtained on 19.3.2007 which is evident from the stamp on the judgment at page 284 of the paper book. Para three of the application for condonation of delay would show that the appellant did not take necessary steps for filing the appeal within the period allowed, on account of the fact that they were deciding whether an appeal is to be filed or not. The appellant society informed their counsel vide communication dated 15.1.2008 to file an appeal which is evident from the letter which reads as under:

No. SKMS/Acct/2008/0018

Dated 15th Jan 08

To

M/s C & C Associates

509, 5th Floor

Word Trade Centre

Barrakhamba Road

New Delhi-110001

Sub: In the matter CS(OS) No. 435 of 2004 titled as Surya Kiran Maintenance

Society vs. Shiv Kumar Sharma & Anr.

Sir,

This has reference to the order passed by the Ld. District Judge in the captioned matter. After consulting our senior officers and discussing the matter internally, we have decided that the order dated 13.3.07 be challenged in High Court of Delhi.

You are requested to kindly prepare the appeal and send us the same at the earliest.

Should you have any queries, please feel free to revert.

Yours sincerely,

SURYA KIRAN MAINTENANCE SOCIETY

(Col. Vinod Sengal)

ESTATE MANAGER

6. By another communication dated 28.4.2008 the appellant reminded the counsel to file the appeal. However, the appeal was filed only on 28.2.2009.

7. Bare reading of the letter dated 15.1.2008 would show that the appellant took almost ten months to decide as to whether an appeal is to be filed or not. After 15.1.2008 the appeal could not be filed on the ground that counsel who was dealing with the case had left the firm and thereafter files were misplaced.

8. In the case of P.K. Ramachandran Vs. State of Kerala and Another, , the Supreme Court has held that an essential pre-requisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.

9. While dealing with an application for condonation of delay u/s 5 of the Limitation Act, the Court must bear in mind two important considerations. Firstly, the expiration of limitation for filing an appeal gives rise to a legal right to a decree-holder to treat the decree as binding between the parties and this right should not be lightly disturbed. Second, if sufficient cause is shown for condonation of delay, the delay should be condoned. It has been repeatedly held by the Supreme Court of India that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice. In the same breath, it has been held that the discretion should be exercised. When there is no negligence or inaction nor want of bona fides imputable to the appellant the Court must be satisfied that there was due diligence on the part of the appellant.

10. The facts of this case are to be considered on the touchstone of the broad principles which have been laid down by the Supreme Court of India while considering the present application for condonation of delay. The conduct of the appellant in the present case shows total callousness. The appellant cannot be

treated at par with an illiterate litigant. The appellant was not diligent in pursuing the matter. The application itself would show that ten months" time was taken only to decide whether an appeal was to be filed or not. Further I do not find the explanation satisfactory that the file was lost in the office from January, 2008 to December, 2008 and thereafter the appeal was filed in February, 2009. In these circumstances the Court is unable to find out any good ground for condoning the delay. Accordingly the application is dismissed.

RFA No. 57/2009

11. In view of the orders passed in application for condonation of delay, appeal is dismissed.