

(1992) 09 DEL CK 0047

In the Delhi High Court

Case No : Regular First Appeal No. 206 of 1992

Virendra Prakash Jha

APPELLANT

Vs

Narain Devi and Others

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1992) 24 DRJ 384

Hon'ble Judges : P.K. Bahri, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Arun Kumar and A.P. Aggarwal, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) This is an application u/s 5 of the Limitation Act. It is alleged that against a decree dated 6th October 1990, the appellant herein asked his counsel Shri Arun Kumar Gupta to file an appeal. The appeal was prepared and the appeal papers signed, the affidavits also signed and attested on 7th March 1991. The court fee of Rs.3,865.00 was also purchased. Thereafter, there was a delay in the actual filing of the appeal and the reason for the said delay has been explained in the application. It has been alleged that the appellant could not personally hand over the appeal duly completed to Shri Arun Kumar Gupta, Advocate but he left them with the clerk of an Advocate in the adjoining chamber in Tis Hazari Court. It is further averred that the appellant could not contact either his lawyer or the counsel of the adjoining chamber for some time and on receiving the notice from the Court, the appellant made further enquiries and it transpired that Shri Arun Kumar Gupta had never received the papers. Thereafter, the papers were searched and they were found lying in the chamber adjoining the chamber of Shri Arun Kumar Gupta and thereafter the appeal was filed.

(2) The reply to the application was filed, wherein the respondent denied the aforesaid averments, the appellant filed a rejoinder and Along with it affidavit of

Sh. Arun Kumar Gupta, Advocate has been filed. It has been stated in this affidavit that the appeal papers were lying in the adjoining chamber of Sh. D.S. Grewal, Advocate and they were found on 16th May 1992 and thereafter the present appeal was filed. It is further averred that the chamber of Shri Grewal was lying locked for more than 1-1/2 years and he used to open his chamber and occasionally visit the Tis Hazari Court. It is further deposed that the clerk of Sh. Arun Kumar Gupta had left the services in the month of April 1991 itself.

(3) We see no reason to disbelieve the affidavit of Shri Arun Kumar Gupta, Advocate. It is clear that the court fee was purchased and the affidavit attested within time. We see no reason as to why there should have been any conscious effort to delay the filing of the appeal. The Explanation contained in the application and duly supported by the affidavit of Sh. Arun Kumar Gupta, Advocate appears to be correct. In our opinion, sufficient cause has been made out for condoning the delay. The application is accordingly allowed and the delay is condoned. Rfa 206/92 Admit. C.M.584/92

(4) Let the proceedings for partition go on but final decree be not passed pending disposal of this appeal. C.M. stands disposed of.