

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No. 265/2006**

Reserved on: November 04, 2010
Date of Decision: July 02, 2010

BABU LALAppellant

Through: Mr.Dharam Dev,Advocate.

versus

KISHAN LALRespondent

Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J.

CM No. 10724/2006 (for delay) in RSA No. 265/2006

1. Appellant has filed this application seeking condonation of delay in filing the appeal challenging the judgment and decree of the First Appellate Court dated 23rd March, 2006.

2. Appellant has sought condonation of delay on the grounds that RCA No.21/05 was listed for hearing on 23rd March, 2006 when the judgment was passed by the court, that appellant was appearing in person as advocates were not appearing because of strike in Tis Hazari Courts, that he requested his counsel to apply for certified copy of the judgment and decree and also to draft appeal against the impugned judgment and decree, that he became busy due to board examination and competition preparation of his son and could not approach his lawyer from May 2006 till the end of vacation as his son was appearing in entrance examinations for professional colleges, that as told to him by the advocate, the file was damaged by termites, and he destroyed the same, that when appellant contacted his advocate on 3rd July, 2006 he came to know that there was delay in filing, that he collected the papers and applied for documents from judicial record on 7th July 2006, which he got on 14th July, 2006 and thereafter he filed the appeal, that there is a delay of 56 days which was caused by circumstances beyond his control.

3. Respondent had put in appearance through his counsel after receipt of notice. However, on 12th March 2008, none appeared on his behalf. Mr.Dharam Dev, Advocate appearing on behalf of the appellant has submitted that delay in filing the appeal was due to

bona fide reasons and sufficient cause as the file was damaged/destroyed by the termites and the appellant could not contact him. Appeal could be filed only after receiving certified copies of the impugned judgment and decree of the First Appellate Court on 19th July, 2006 and after removal of objections and payment of court fee, he refiled the appeal on 8th August, 2006. He has prayed that under these circumstances, substantial question of law regarding limitation for filing the suit is involved in this appeal and since dispute is *inter se* the brothers, delay in filing the appeal deserves condonation.

4. First appeal was decided by the Appellate Court vide impugned order dated 23rd March, 2006. Undisputedly, appellant was present in the court when the judgment was pronounced. Though it is averred in the application that appellant had requested his counsel to apply for certified copy of the judgment and decree to file second appeal, however, it is not known if appellant or his advocate had in fact applied for obtaining certified copy of the judgment and decree for filing the appeal within the period of limitation. As per the record and as per his own averment in para-7 of the application, he applied for certified copy of the documents and judgment only on 7th July, 2006.

5. Period of limitation for filing of an appeal is 90 days from the date of the judgment and decree appealed. Section 12 of the Limitation Act entitled the appellant to exclude the period taken for preparation of the certified copy i.e. from the date it was applied till the date it was readied for supply. Appellant received certified copy of the judgment and decree on 14th July, 2006. It is pertinent that when appellant filed an application for obtaining the certified copy of the documents, period of limitation for filing the appeal had already expired. Therefore, in this case, appellant cannot take any benefit under Section 12 of the Limitation Act.

6. In '*Riasat Ali Vs. Smt.Sayeeda Begum & Anr.*', **90(2001)DLT 112**, it was observed that there is no provision which allowed a litigant to apply for a certified copy on the reopening day and get a remission from the commencement of the remaining of time for the vacation period. Period of limitation for filing the appeal was over on 21st/22nd June, 2006. High Court was closed for summer vacations till 30th June, 2006. Appellant, therefore, was required to file his appeal on 1st July, 2006 which he did not do. As discussed above, he applied for certified copy of the impugned judgment only after the expiry of the period of limitation for filing an appeal.

7. It is submitted that appellant could not contact his counsel because of pre-occupation with his son who was taking board examination and entrance examination for professional colleges. To my mind, board examination must have been over by the end of March or may be in the first week of April. It is not disclosed as to for which entrance examination, his son was preparing. It is pertinent that a bald averment has been made in para-4 of the application that appellant was busy because of his son's examination and could not approach the lawyer. However, he has not given any date of alleged entrance examination for professional colleges. Appellant hardly had to do anything with the studies of his son for competition purposes. He has not annexed any document on record to indicate that his son was actually preparing for his entrance examination for his professional colleges, and therefore he was handicapped in meeting his advocate. Surprisingly, his advocate is stated to have destroyed the file because it was damaged by the termites. While knowing that this appeal was to be filed even if the file was damaged by the termites, it was required to be saved for purposes of preparing the appeal. It is pertinent that Mr.Dharam Dev, who has filed this appeal on behalf of the appellant, was also his advocate in the First Appellate Court. However, it is not clear

from the record if he was also representing him in the Trial Court. To substantiate the plea that the file was destroyed by termites, Mr.Dharam Dev or his associate or clerk could have filed an affidavit to this effect. I do not find any such affidavit on record. It is not believable that only the file pertaining to this case was destroyed by the lawyer having been damaged by the termite attack. Therefore, it cannot be considered as a sufficient cause for condonation of delay.

8. Appeal was finally filed on 8th August, 2006 after obtaining certified copy of the judgment on 14th July, 2006. However, delay in filing the appeal after 14th July, 2006 goes unexplained on record. Under these circumstances, appellant has failed to convince or satisfy the Court that due to sufficient reasons he could not file the appeal in time.

9. As discussed above, no appeal could have been filed without certified copy of the judgment and appellant is not entitled to any benefit under Section 12 of the Limitation Act. He applied for certified copy after expiry of period of limitation for filing the appeal. Appeal was, therefore, patently barred by time even if

reasons for condonation of delay are considered to be sufficient cause.

10. Hence, application is dismissed.

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11. In view of dismissal of the application seeking condonation of delay, appeal being barred by period of limitation is accordingly dismissed.

**ARUNA SURESH
(JUDGE)**

**JULY 02, 2010
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