

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

+ **RSA 145/2003**

**Date of Decision: 1st July, 2010**

DEV NANDAN TATI ..... Appellant

Through: Mr. Manoj K. Srivastava, Advocate

**VERSUS**

BABU LAL & ANR. .... Respondents

Through: Mr. Vivek Sharma, Advocate with  
Mr. Pankaj Kumar, Advocate

% **CORAM:**  
**HON'BLE MS. JUSTICE ARUNA SURESH**

- (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 APPL. NO.427/2003 (delay) in RSA 145/2003**

1. Appellant has filed this application under Section 5 of the Limitation Act (hereinafter referred to as 'Act') seeking condonation of delay of three days in filing the appeal on the ground that delay in filing the appeal was due to miscalculation of days by the counsel and the same was not intentional. No reply to the application has been filed

by the Respondents.

2. Mr. Vivek Shama, counsel for the Respondents has submitted that application is not supported by an affidavit of the counsel who miscalculated the days in filing the appeal beyond the period of limitation and therefore, the application deserves dismissal.
3. True that there is three days delay in filing the appeal. The impugned judgment and decree is dated 1<sup>st</sup> April, 2003 and the appeal was filed by the appellant on 15.07.2003. There were certain objections by the Registry and after removal of the objections, appeal was refiled on 5.08.2003. Appeal was listed first time before this court on 8.08.2003. Therefore, there is a delay of 15 days in filing the appeal. However, appellant got the certified copy of the impugned judgment only after 12 days of his applying for the same. Given benefit of Section 12 of the Act, there is only three days delay in filing the appeal.
4. There is every possibility that while calculating the period of limitation, counsel for the appellant committed mistake. To err is human. Hence delay of three days in filing the appeal occurred. The delay is nominal and is not prejudicial to the interest of the Respondents. Under such circumstances, it was not necessary for the Advocate to file his affidavit stating the reason for delay in filing the

appeal, though the same was desired.

5. Mistaken advice given by a legal practitioner may in the circumstances of the case give rise to sufficient cause within the section as there is no general doctrine which saves parties from the results of wrong advice. The court has to adopt a liberal approach while considering the application filed under Section 5 of the Act and/or under Order 41 Rule 3 (a) CPC while considering the circumstances responsible for the delay in filing the appeal. Rigidity in handling these applications sometime may cause injustice to the appellant.
6. Appellant had filed a suit for possession and mesne profits against the Respondent. After obtaining the decree from the first court, appellant in appeal filed by the Respondent lost his decree for possession. Hence, he filed this appeal.
7. Considering that delay in filing the appeal was due to bonafide on the part of the Advocate who committed mistake in calculating the days for filing the appeal within the period of limitation. Mistake of the lawyer, therefore cannot be held against the interest of the appellant.
8. Hence, I conclude that appellant is entitled to condonation of delay in filing the appeal. In doing so, I have also kept in mind the interest

of the parties and nature of relief claimed by the appellant in this appeal.

9. Hence, application is allowed, delay of three days in filing the appeal is hereby condoned.

**RSA 145/2003**

For hearing on substantial question of law as well as on CM APPL No.426/2003 for stay, list on 26<sup>th</sup> July, 2010.

**ARUNA SURESH  
(JUDGE)**

**JULY 01, 2010**

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