

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

+ **RSA 26/1993**

Date of Decision: 1st July, 2010

KUREY

..... Appellant

Through: Mr. Sunil Aggarwal, Advocate

VERSUS

DALIP & ORS.

..... Respondents

Through: Mr. Swastik Singh and
Mr. Gaurav Gupta, 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 Nos.6767/2008 (Restoration) and 6768/2008 (delay) in RSA 26/1993

1. These two applications have been filed by the applicants under Order 41 Rule 19 read with Order 9 Rule 13 CPC and under Section 5 of the Limitation Act respectively seeking restoration of the appeal and condonation of delay in filing the application for restoration of the appeal.
2. Case of the appellant is that he had engaged the services of Mr. P.P.

Juneja Senior Advocate to represent him in this case. Mr. Juneja had advised him that he would inform him as and when his presence would be required in the Court. He had no information from his lawyer about the date 15th July, 2003 when the appeal was dismissed in default for non prosecution. The appellant never came to know of the dismissal of the appeal till he received notice of the revival application on 14.02.2007 filed by the respondent in the court of Additional District Judge, Land Acquisition on 17.12.2007 for revival of reference pending inter se the parties under Section 30 and 31 of Land Acquisition Act, which was stayed sine die because of pendency of the appeal.

3. Mr. Mahender Singh Advocate was working as Junior of Shri P.P. Juneja and had been appearing in the Court in that capacity and therefore had moved the application on behalf of the applicant for bringing on record the legal heirs of deceased appellant Kurey. The actual counsel was Mr. P.P. Juneja only.
4. Respondent though has contested these applications but has not refuted that Mr. P.P. Juneja was the Advocate representing the applicant in the appeal. True that there is inordinate delay of 1664 days in filing these applications, the fact remains Mr. P.P. Juneja Advocate had filed the appeal. He was quite sick for some time and

he expired in the year 2002. On 15th July, 2003 when the appeal was dismissed in default for non prosecution, Mr. Juneja was no more in this world. Applicant therefore, could not have been informed about the date when the matter was listed for hearing on 15th July, 2003 and therefore none appeared on that date.

5. It is noted that parties to this appeal were also parties in RFA No.31 of 1987. Under similar circumstances, RFA was dismissed in default on 7.02.2002. Similar applications were filed by the applicant for restoration of the RFA which were allowed by the Division bench of this Court on 21st November, 2008 and the RFA was restored to its original number.
6. Under the circumstances of this case, applications are allowed. Delay in filing the applications for restoration is hereby condoned. Appeal is hereby restored to its original number.

RSA 26/1993

Since substantial question of law have already been formulated and appeal has been admitted vide order dated 18th February, 1993, list for final hearing in the category of 'Regular Matters' on its own turn.

**ARUNA SURESH
(JUDGE)**

JULY 01, 2010

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