

RCA DJ No 105/2017

Delhi Development Authority Vs Rattan Singh

16.11.2019

Present: Sh. Kshitiz Ahuja, Ld. Counsel for appellant.

Sh. Bijender Kumar, Ld. Counsel for respondent.

Sh. Sushant Kumar, Ld. Counsel for applicant.

An application u/s 5 of Limitation Act for condonation of delay in filing the instant appeal moved on behalf of appellant is pending adjudication. Respondents have not filed any reply to the said application till date. Ld. Counsel for respondent has stated at bar that he has no objection if the instant application is allowed subject to heavy cost.

Arguments on the said application heard and record perused.

The decree in the instant case was passed on 14/12/2016. As per article 116 (b) Limitation Act, appeal against the decree has to be filed within 30 days from the date of decree. The 30 days expired on 15/01/2017. The instant appeal has been filed on 01/07/2017. The appellant applied for certified copy of the judgment on 20/12/2016 which was made available on 16/01/2017. Section 12 (3) Limitation Act provides that the time requisite for obtaining the copy of judgment shall be excluded. Hence, the period between 20/12/2016 to 16/01/2017 has to be excluded in computing the period of limitation.

The appellant has sought condonation of delay of 113 days in filing the instant appeal on the ground that appeal was sent to DDA through senior law officer on 30/01/2017. Thereafter the file was routed

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to the Principal Commissioner for seeking his approval which was duly approved on 03/02/2017. Thereafter filing of appeal was entrusted to panel lawyer Sh. M. S. Bhana on 07/02/2017 and a fresh file was opened by AD (legal) on 08/02/2017 and same was sent to SLO (LM) on 13/02/2017 who sent it to DD/LM/East Zone on 23/02/2017. The files were received by panel lawyer Sh. M. S. Bhana on 08/03/2017 who sought certain clarifications from the department which were responded by the Kanungoo on 21/03/2017 but the files were again sent back by panel lawyer Sh. M. S. Bhana on 27/03/2017, 05/04/2017 and 02/05/2017. On 08/05/2017, the panel lawyer Sh. M. S. Bhana cited his personal difficulty and requested to entrust the appeal to some other lawyer. Accordingly, the instant appeal was assigned to Id counsel for appellant on 09/05/2017 who received the file on 26/05/2017 and prepared the appeal on 07/06/2017 and received it after signatures of concerned official of department on 08/06/2017. Ld. Counsel for the appellant submitted that the appellant/DDA has been able to show 'sufficient cause for the delay and it is trite law that public interest should not be allowed to suffer on account of fault of counsel or negligence on the part of any official of DDA.

The expression 'sufficient cause' as appearing in Section 5 of Indian Limitation Act has to be given a liberal construction so as to advance substantial justice. The primary reason for delay in filing the present appeal was on account of administrative act on the part of official of the defendant as well as the previous counsel. Time and again, it has been held that the government department cannot be put on the same

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footing as a private party. There is nothing on record to suggest that there was some malafide on the part of appellant in not approaching the court within the period of limitation. The appellant in all sincerity wants to pursue the instant appeal. The interest of public at large cannot be compromised for the reason of fault of certain officials or the counsel. The delay in filing the instant appeal is hereby condoned subject to cost of Rs. 5000/- to be paid to the respondents.

Ld. Counsel for respondent has submitted that cheque with respect to cost imposed upon be issued in the name of respondent no. 3 Brahm Prakash and remaining respondents will have no objection of the same.

Another application u/o 1 rule 10 CPC moved on behalf of applicant Sh. Selak Ram Nagar is pending adjudication.

During the course of arguments on the said application, it is noticed that the application u/o 1 rule 10 CPC moved by Sh. Selak Ram is not on record. Ahlmad is directed to trace the said application positively by next date of hearing.

Re-list the matter for arguments on the application u/o 1 rule 10 CPC on 17/12/2019.

(Shuchi Laler)
ADJ(East District) KKD
Delhi/16.11.2019