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

+ **CM APPL. 71210/2024 in**
RFA 78/2024

JAGJEET KAUR

.....Appellant

Through: Mr. Raghavendra Mohan Bajaj,
Advocate

versus

PATVINDER KAUR

.....Respondent

Through: Mr. R.S. Juneja and Mr. Shiv Kumar,
Advocate

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

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18.12.2024

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 71210/2024 (stay)

1. Learned counsel for respondent appearing on notice of this application objects to grant of any interim relief on the ground that the application for condonation of delay in filing the appeal is till date pending. Keeping in mind the submissions of appellant recorded on last date, it is decided that the delay condonation application be taken up today itself.

CM APPL. 5710/2024 (for condonation of delay of 327 days in filing)

2. Learned counsel for respondent submits that he does not want to file any reply to this application but strongly opposes the same. I have heard learned counsel for both sides and examined the record.



3. The appellant has assailed preliminary judgment and decree of partition of immovable property. The impugned judgment and decree being dated 05.12.2022, limitation period prescribed to file appeal expired on 05.03.2023 but this appeal was filed on 25.01.2024. The delay in filing this appeal has been explained on the ground that the appellant is aged lady, suffering with ailments and had to engage a legal aid counsel; and that the appellant did not possess complete record of the case, so the legal aid counsel was handicapped.

4. The opposition to this application is that the appellant has not explained the delay on day to day basis. It is also argued by learned counsel for respondent that since the appellant did not file the appeal in time, the partition suit continued ahead and culminated into final decree of partition, which has been separately challenged by the appellant.

5. I am conscious that the appellant has not explained the delay in filing this appeal on day to day basis. But that is not the only consideration while examining the condonation of delay in filing the appeal. Parties are related to each other in the sense that the appellant is mother in law of the respondent. More importantly, as observed in last order, despite there being an elaborate defence set up in the written statement, the learned trial court passed the impugned order, thereby summarily granting the preliminary decree. Keeping in mind the limited scope of the stage today, I do not find it appropriate to delve deeper into the merits of the case. But suffice it to say that if the delay in filing the appeal is not condoned in this case, it would lead to travesty of justice.

6. Learned counsel for respondent submits that respondent had already spent money for execution of the final decree of partition. That can be taken



care of through costs.

7. In view of above discussion, the application is allowed and delay in filing the appeal is condoned subject to the appellant paying cost of Rs. 15,000/- to the respondent by the next date.

CM APPL. 71210/2024 (stay)

8. In view of above discussion, coupled with the observations recorded on last date operation of the impugned judgment and decree shall remain stayed till the next date of hearing.

9. List on 21.04.2025 as already fixed.

10. In the meanwhile, keeping in mind the relationship between the parties and nature of dispute, matter is also referred to Mediation Centre, Delhi High Court where both sides shall appear on 23.12.2024 at 02:00pm.

GIRISH KATHPALIA, J

DECEMBER 18, 2024/as

[Click here to check corrigendum, if any](#)