

**Yog Raj** Vs. **Sunpa & ors a/w connected matters**

**CMP(M) No. 1370 of 2022  
with RSA No. 112 of 2022**

**CMP(M) No. 1370 of 2022**

26.6.2023

Present: Mr. Aditya Thakur, Advocate, for the applicant.

Mr. Sudhir Thakur, Senior Advocate with Mr. Karun Negi, Advocate, for the non-applicant.

**RSA No. 112 of 2022**

Mr. Sudhir Thakur, Senior Advocate with Mr. Karun Negi, Advocate, for the appellant.

Mr. Aditya Thakur, Advocate, for respondent No. 1.

CMP.M No. 1370 of 2022

By way of present application, the applicant has sought condonation of delay, in filing the accompanying appeal.

2. The applicant has filed the present Regular Second Appeal, under Section 100 of the CPC, before this Court. Since, the appeal could not be filed within the prescribed period of limitation, as such the present application, under Section 5 of the Limitation Act has been filed.

3. As per the contents of the application, the appeal could not be filed within time due to some renovation work in the office of the counsel, representing the appellant, before the learned trial Court and the case file of the applicant alongwith the certified copy of impugned judgment and decree got misplaced.

4. It is the further case of the applicant that the counsel, representing the applicant also practices at Kasauli Courts and mistakenly, the counsel, under some bonafide mistake, tagged the file of the applicant with some other file, pertaining to the matter, which was pending adjudication in the Court at Kasauli. As such, the applicant could not file the appeal within the prescribed period of limitation.

5. Lastly, it has been pleaded in the application that on 16.9.2022, the case file was traced out and found at Kasauli. Thereafter, the present appeal has been filed. The application is duly supported by the affidavit of the applicant.

6. When put to notice, the application has been contested by the non-applicant by denying the factual position and alleged bonafide mistake of the counsel for the applicant. It is case of the non-applicant that despite passing of impugned judgment and decree, by the learned first appellate Court, the appeal has not been filed within the stipulated period.

7. As such, a prayer has been made to dismiss the application on the ground that the applicant could not explain the delay to the satisfaction of this Court. The delay is stated to be intentional and deliberate and the appeal has been filed, after the prescribed period of limitation, just to get the undue advantage.

8. Thus, a prayer has been made to reject the application. The reply to the application is also supported by the affidavit of non-applicant, who has mentioned her age as 75 years.

9. Heard.

10. During the course of arguments, it has not been disputed that the appeal against the judgment and decree, has been decided by the learned first appellate Court on 29.12.2021. Non-applicant has also preferred an appeal, which is registered as RSA No. 112 of 2022, against the applicant herein. The non-applicant has mentioned her age as 75 years, claiming to be a senior citizen. But, considering the age of the applicant, which has been mentioned in the application, as 60 years, no advantage can be taken by the non-applicant, on this ground.

11. Moreover, although it has been pleaded in the reply that the delay in filing the appeal was intentional and deliberate, but the reply is totally silent about the object, which the applicant would achieve in filing the appeal, after the prescribed period, had he not been prevented to do so by the circumstances, as mentioned in the application. Moreover, it is no longer res-integra that the matter should be decided on merit and not merely on the basis of technicalities.

12. Considering, all these facts, the applicant is able to satisfy the conscience of this Court for condonation of delay. Accordingly, the application is allowed after condoning the delay in filing the present appeal. The application is, thus, disposed of.

RSA No. \_\_\_\_\_

13. Be registered.

14. Let record of the learned trial Court as well as learned First Appellate Court be requisitioned, for 11.9.2023.

**(Virender Singh)**  
**Judge**

**June 26, 2023**  
**(kalpana)**