

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

16TH OCTOBER, 2024

Delay Condonation Application

In

SECOND APPEAL No.148 of 2019

Sanjay Jain

.....Applicant

Versus

Texla Towers LTD and Others

.....Respondents

Counsel for the Applicant	:	Mr. Abhijay Negi, Advocate with Ms. Snigdha Tiwari, Advocate.
Counsel for the Respondent No.1.	:	Mr. Piyush Garg, Advocate.
Counsel for the Respondent No.3.	:	Mr. T.S. Bisht, Deputy Advocate General for the State.

Hon'ble Alok Kumar Verma,J.

An Original Suit (O.S. No.727 of 2003) was filed by the applicant/proposed appellant-plaintiff for declaration, perpetual injunction and mandatory injunction. The trial court had dismissed the said Suit on 31.05.2012. The applicant had filed an Appeal (Civil Appeal No.74 of 2012) before the Ist Appellate Court. Learned IVth Additional District Judge, Dehradun dismissed the said Appeal on 07.10.2016. The appellant had filed a Review Application (Miscellaneous Case No.1238 of 2016) on 09.11.2016 before the Ist Appellate Court to review the judgment dated 07.10.2016. The said Review Application has been dismissed on 30.07.2019. The proposed Second Appeal has been filed on

27.09.2019 along with an Application to condone the delay of 994 days.

2. Heard Mr. Abhijay Negi, learned counsel with Ms. Snigdha Tiwari, learned counsel for applicant-proposed appellant, Mr. Piyush Garg, learned counsel for respondent no.1 and Mr. T.S. Bisht, learned Deputy Advocate General for respondent no.3 on the Delay Condonation Application.

3. Mr. Abhijay Negi, Advocate, has contended that the land of the suit property was Nazul land. A lease deed of the said land was executed by the State Government in favour of the applicant-appellant. The applicant and Sardar Raja Singh formed a company. The said Company is respondent no.1. The applicant held 45% shares and Sardar Raja Singh held 55% shares in the said company. The applicant had sold only the structure standing on the said land to the respondent no.1 by way of five sale deeds. The State Government had granted freehold to the land-in-question in favour of the applicant and the respondent no.1. The respondent no.1 had filed an Original Suit (No.163 of 2014) challenging the freehold order which was passed in favour of the applicant. The said Original Suit was dismissed by the trial court. The respondent no.1 has filed a First Appeal (No.135 of 2022), which is pending before this Court. He further submitted that in review application, the counsel of the review applicant used to come from Muzaffarnagar.

Five adjournment applications were moved by the review applicant while one adjournment application was filed by the respondent no.1 and the respondent no.1 was not present in the said case twice.

4. Mr. Abhijay Negi, Advocate, has contended that the 1st Appellate Court had not considered the documents filed by the applicant. There were errors apparent on the face of the record, therefore, the applicant had filed the review application. After the review application was dismissed, the applicant contacted his counsel. His counsel asked for certain documents which were required for preparation and drafting of the Second Appeal. The required documents were made available to the counsel. Thereafter, the Second Appeal has been filed without any further delay on 27.09.2019.

5. Mr. Piyush Garg, learned counsel for the respondent no.1, on the other hand, has opposed the said submissions of Mr. Abhijay Negi, Advocate. He has contended that out of the points raised by Mr. Abhijay Negi, Advocate, several points had not been raised by the applicant-appellant in his pleadings. The period of lease, granted in favour of the applicant, was expired in the year, 1980 and the property-in-question were sold by the applicant in favour of the respondent no.1 by way of five sale deeds. Therefore, the applicant has no right of any kind

on the suit property. He has further contended that the applicant has not assigned any cogent reason in support of the delay condonation application. The reasons furnished are vague and are insufficient to make out a cause for condonation of delay. A right has accrued in favour of the respondent no.1 on account of the willful delay committed by the applicant and because of non-assigning of any just and sufficient cause for condonation of delay.

6. Mr. Abhijay Negi, Advocate, argued that the applicant has supported his contentions through his affidavit that since there were errors apparent on the face of the record, therefore, he had moved the review application with due diligence and in good faith.

7. It is considered view of the Court, having regard to the totality of the facts and circumstances of the case, duly supported by the affidavit of the applicant, the time period which was spent in pursuing the review application is bound to be excluded and further this Court is inclined to hold that the cause shown by the applicant is a sufficient cause within the meaning of Section 5 of the Limitation Act, 1963. Therefore, the Application filed by the applicant for condonation of delay in filing the Second Appeal deserves to be allowed. It is accordingly allowed but it is subject to the condition that the applicant shall pay the cost of

Rs.30,000/- (Rupees Thirty Thousand) to respondent no.1 within one week from today.

8. List on 04.11.2024 for arguments on Admission.

9. On the request of Mr. Abhijay Negi, Advocate and with the consent of Mr. Piyush Garg, Advocate, list on 13.11.2024 instead of 04.11.2024.

ALOK KUMAR VERMA, J.

Dt: 16th October, 2024
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