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SLP(C)No. 2959 OF 2003

ITEM No.25

Court No. 4

SECTION XIV
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.2959/2003

(From the judgement and order dated 04/12/2002 in FAO 334/02
of The HIGH COURT OF DELHI AT N. DELHI)

PUNJAB NATIONAL BANK

Petitioner (s)

VERSUS

K.K. SHARMA (D) BY LRS.

Respondent (s)

Date : 26/09/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s) Mr. Dhruv Mehta, Adv.
Mr. Mohit Chaudhary, Adv.
Ms. Shalini Gupta, Adv.

For M/s K.L. Mehta & Co., Adv.

For Respondent (s)

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

(Neena Verma) (Vijay Aggarwal)
Court Master Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8115 OF 2003
(Arising out of S.L.P.(C) No.2959 of 2003)

Punjab National Bank..... Appellant

Versus

K.K. Sharma (D) by L.Rs.

..... Respondents

O R D E R

Leave granted.

The above appeal has been filed against the order of a Division Bench of the High Court of Delhi dated 04.09.2002 in FAO(OS) No.334 of 2002 wherein the Division Bench while affirming the order of the learned Single Judge, dismissed the application filed under Section 5 of the Limitation Act by the appellant seeking for condonation of delay in filing of the application under Order 22 Rule 4 CPC in bringing the legal representatives of the defendant in suit.

Heard the learned counsel appearing on either side.

Learned counsel for the respondents vehemently opposed the contentions and claims made on behalf of the appellants in justification of the condonation of delay by contending that the delay was not properly explained and that even in this Court only one appeal has been filed instead of two appeals and, therefore, no indulgence need be shown to the appellant. It is also contended that the proceedings, if allowed to be pursued, would amount to harassment of the legal representatives.

We have carefully considered the submissions of learned counsel appearing on either side. We are of the view that having regard to the stakes involved, the fact that it is a nationalised Bank, the further fact that substantial amounts were alleged to have been defalcated by the deceased-defendant, the High Court could have adopted a more reasonable approach in the matter of condonation without being highly technical of the issues. The public interest involved could not have been completely overlooked. We do not consider the pursuit of the suit filed even during the lifetime of the defendant, would amount to harassment of the legal representatives. Taking into account the overall requirements of the case and the interests of justice, we are of the view that delay committed by the appellant in bringing on record the L.Rs. of the deceased-defendant should be condoned, subject to imposition of suitable costs. We, therefore, direct the condonation of the delay involved in filing the application under Order 22, Rule 4 CPC in the proceedings which were pending before the High Court at the time of the death of the original defendant, on payment of Rs.10,000/- towards costs within four weeks from today failing which the appeal shall stand dismissed. If the respondents or the learned counsel for the respondents are not inclined to receive costs, as directed to be paid, the appellants shall be at liberty to deposit the same to the credit of the proceedings in the High Court and it would amount to sufficient compliance with our directions. Since the consequential orders of abatement of suit is only on account of the refusal of condonation, with the condonation allowed, we direct the proceedings in suit to be restored for being further dealt with in accordance with law.

The appeal is disposed of on the above terms.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)

New Delhi,
September 26, 2003.