

HIGH COURT OF DELHI

BENCH : HON'BLE MS. JUSTICE SHALINDER KAUR

Date of Decision: May 06, 2024

CM(M) 2/2024, CM APPL. 24/2024--stay

DINESH CHANDRA GUPTA ...PETITIONER

VERSUS

TAJINDER PAL SINGH & ANR. ...RESPONDENTS

Legislation:

Section 5 of the Limitation Act, 1963

Article 227 of the Constitution of India

Section 114 of the Civil Procedure Code (CPC)

Order XLVII Rules 1 & 2 CPC

Section 151 CPC

Section 126 of Delhi Municipal Corporation (DMC) Act

Subject: Petition under Article 227 challenging the order of the Additional District Judge which dismissed the petitioner's review petition on grounds of delay in filing under Section 5 of the Limitation Act.

Headnotes:

Property Dispute - Rights over terrace access - Dispute arising from the installation of an iron grill by the petitioner obstructing the respondents' access to the terrace - Initial suit filed by respondents resulted in a directive for the petitioner to remove the obstruction - Subsequent appeals upheld the trial court's decision.

Limitation Issue - Condonation of Delay - Petitioner's review petition dismissed by the Additional District Judge due to a delay of 94 days, unexplained satisfactorily by the petitioner - High Court confirms no sufficient cause shown for delay in filing review petition.

Procedural Irregularities - Petitioner alleged late discovery of crucial MCD assessment order impacting property rights, claimed discovered only in 2023

- High Court finds inconsistencies in petitioner's submissions regarding the timeline of acquiring the document and its awareness.

Decision - Dismissal upheld - High Court finds no merit in the petitioner's arguments regarding procedural lapses or factual discoveries that could justify condonation of delay or overturn the lower court's decisions - All applications and the petition itself are dismissed.

Referred Cases:

- Baswaraj vs The Spl. Land Acquisition Officer (2013) 14 SCC 81
- Lingerswaran vs Thirunagalingam, Special Leave to Appeal (Civil) 2054-2055 of 2022

Representing Advocates:

Mr. Akshay Ringe, Mr. Anuj Malhotra, Mr. Yogesh Gupta, and Ms. Prerna Mahajan for the petitioner.

Mr. Jaspreet Singh for the respondents.

J U D G M E N T

1. The petitioner is aggrieved by the dismissal of his application under Section 5 of the Limitation Act, for condonation of delay in filing the review petition, consequently resulting in the dismissal of his review petition vide the order dated 09.12.2023 passed by the learned Additional District Judge 06, South East, Saket Courts, Delhi ("ADJ") in Review Petition no. 08/2023 titled as "*Dinesh Chandra Gupta vs Tajinder Pal Singh and Ors.*". Thus, the present petition has been preferred invoking the supervisory jurisdiction of this court under Article 227 of the Constitution of India.
2. To put it succinctly, the short controversy emanates from the facts that the late Smt. Chatter Kaur wife of late Sh. Mangal Singh was the lessee with the lease hold rights in respect of suit property i.e. Plot no. A-443, Defence Colony, New Delhi consisting of floors up to the second floor and a terrace above it. After the death of Smt. Chatter Kaur on 09.10.2003, vide her Will dated 05.10.1994, each of the three children were bequeathed a floor each i.e. ground floor, first and the second floor. Thereafter, a mutual settlement agreement dated 04.11.2011 was entered into by the three parties whereby

- it was declared inter alia, all the parties will have 1/3rd equal undivided rights and shares in the second floor terrace and all future floors above it.
3. After sometime, dispute arose between the parties due to petitioner allegedly installing an iron grill and restricting the common staircase which leads to the terrace over the second floor thereby restricting access of the respondents to the terrace.
 4. Subsequent thereto, despite alleged repeated requests from the respondents, the petitioner did not remove the iron grill. Resultantly, upon exchange of legal notices and replies thereto between the parties, the Respondent no. 1 filed the suit for mandatory and permanent injunction bearing suit no. 71/2019 against the petitioner herein and his brother Respondent no. 2 being proforma party. The reliefs sought by the respondent no. 1 were with respect to restraining the defendants from interfering with the access to terrace on top of the second floor and for removing certain iron grills from the suit property.
 5. Upon conclusion of the proceedings in the case, the learned trial court passed the judgement dated 25.03.2019 thereby directing the petitioner to remove the iron grill and to allow free access to the respondent no.1 to the terrace and further restrained him from interfering with the access to the respondent no.1 in this regard.
 6. Following this, the petitioner preferred a first appeal being RCA No. 71/2019 titled as "*Dinesh Chandra Gupta vs Shri Tajinder Pal Singh and Anr*" before the learned ADJ on 29.04.2019. The fate of the appeal resulted in dismissal vide order dated 09.05.2023 passed by the learned ADJ holding that all three parties have equal rights in respect of the terrace over second floor in the property in question and the defendant no. 1 is not the exclusive owner and upheld the judgement and decree dated 25.03.2019 passed by the learned trial court.
 7. Subsequently, on 09.06.2023 the Respondent no. 1/Decree Holder initiated Execution Petition No. EX/131/2019 against the petitioner/judgement debtor.
 8. In the meanwhile, the petitioner on 12.08.2023, took the recourse of review of the judgement passed in appeal and consequently moved the present review petition bearing no. 08/2023 under Section 114 CPC read with Order XLVII Rule 1 & 2 read with Section 151 CPC, along with application seeking stay of operation of the execution proceedings. It was the petitioner's stand that he recently came to know of an assessment order dated 23.01.1995 passed by the learned Deputy Assessor & Collector, MCD Central Zone, New Delhi whereby it came on record that late Smt. Chattar Kaur through

- objection to the notice under section 126 of DMC Act, admitted that the terrace of the first floor was sold for Rs. 1,90,000 through Power of Attorney and the new purchaser already constructed the second floor.
9. It was further the contention of the petitioner that he applied for a certified copy of the aforementioned assessment order on 13.07.2023 and received the same on 20.07.2023 thus there was only a delay of 19 days in filing the review petition.
 10. On the other hand, the respondent no.1 controverted the submissions by stating before the learned ADJ that the review petition itself wasn't maintainable as it was based on fabricated facts and also the petitioner failed to mention how the delay of 19 days is calculated.
 11. It was submitted that the order impugned in the review petition was passed on 09.05.2023 and the review was filed on 12.08.2023 much beyond 30 days from the pronouncement of order. Further, petitioner did not show when he applied for the certified copy of the assessment order and why it wasn't filed earlier despite getting the same in July, 2023, he failed to file the review petition immediately. Thus, the conduct of the petitioner is clear that these are just mere delay tactics.
 12. The learned ADJ opined that the petitioner has not been able to explain sufficient reason caused for delay in filing the review petition. The learned ADJ dismissed the review petition vide impugned order dated 09.12.2023 on account of unexplained delay of 94 days in filing the review petition. Further, dismissed the application under Order XLI Rule 17 read with Order XLVII Rule 1 CPC for additional evidence as infructuous. Hence, the present petition.
 13. The learned counsel for the petitioner submitted that the learned ADJ has not gone into the merits of the case and erroneously dismissed the review petition only on ground of delay of 94 days. Whereas, there was actually a delay of 27 days and not by any stretch could have been 94 days as calculated by the learned ADJ.
 14. The learned counsel also submitted that the learned ADJ overlooked that the certified copy was applied on 17.05.2023 and received on 24.06.2023 and the review was filed on 12.08.2023, therefore, only a delay of 27 days occurred in filing the same.
 15. The learned counsel submitted that the respondent no.1 has relied on the judgements of the Supreme Court in cases titled as "*Baswaraj vs The Spl. Land Acquisition Officer*" (2013) 14 SCC 81 and "*Lingerswaran etc vs Thirunagalingam*" in Special Leave to Appeal (Civil) 2054-2055 of 2022

wherein the Apex Court had dismissed the application for condonation of delay. However, respondent failed to distinguish the facts of the cases on the ground that there had been a deliberate and unrealistic delay of around 5 years and 467 days respectively. Whereas, in the present case, there is only a delay of 19 days.

16. To the contrary, the learned counsel for the respondent no.1 submitted that the present petition is not maintainable as there is no illegality with the order of the learned ADJ. Further, the petitioner has not approached this court with clean hands and has concealed material facts.
17. Learned counsel submitted that the grounds taken by the petitioner before the learned ADJ are not taken before this court and the ground of not getting the certified copy in time is also not taken by the petitioner in the present petition. Also, the application for condonation of delay as filed before the learned ADJ was not even filed before this court and it was only upon directions of this court that the same was filed belatedly.
18. As far as the assessment order is concerned, the same was always in the knowledge of the petitioner as the petitioner attended the hearing of the assessment and filed his own separate copy of valuation and as such, there was no question of the petitioner getting to know about it later or only in year 2023.
19. Learned counsel also contended that the photocopy of the MCD notice dated 24.11.92, allegedly obtained by the petitioner under RTI and is addressed to Chatter Kaur c/o Dinesh Chandra which shows a „receiving“ by petitioner under his own signatures on copy of the notice in the MCD file received through the RTI which clearly shows that the notice was prepared and delivered to Petitioner only by hand. 20. Submissions heard, record perused.
21. On perusal of the application for condonation of delay as filed by the petitioner before the learned ADJ, it would appear that the application is vague inasmuch as it doesn't reveal the number of days for which the delay is to be condoned. Moreso, the petitioner failed to disclose the actual date when the certified copy of the judgment passed by the learned Trial Court was ready to be delivered by the copying agency to the petitioner. Though, the petitioner may have received it on 24.06.2023. Even otherwise, if it is assumed that the certified copy was ready on 24.06.2023 and was collected on the same day, the petitioner was required to file a review petition on the next date or on the reopening of the Courts after summer vacation, which he has failed to do and has not assigned any cogent reason for not filing the same within the limitation period.

22. As far as the certified copy of the assessment order is concerned, respondent no. 1 has taken the objection that the petitioner was participating in the proceedings before the learned deputy Assessor and Collector, MCD, Central Zone, Delhi since he had filed its own separate evaluation report which is recorded in the assessment order itself, the same has not been disputed by the petitioner. Therefore, it cannot be said that the petitioner had no knowledge of the assessment order prior in time. Thus, there are no merits in the arguments on these two counts.

23. Thus, it is manifest that, the learned ADJ has aptly followed the provisions under Section 5 of the Limitation Act coupled with Article 124 of the Act along with the precedents relied by it. Failing to establish sufficient cause, the learned ADJ rightly dismissed the application and consequently the review petition.

24. In view of the aforesaid, the present petition along with pending application is accordingly dismissed.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.