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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 207/2019 & CM APPL. 45087/2019, CM APPL.
45088/2019, CM APPL. 45089/2019

ANIL KUMAR Appellant
Through: Mr.Vishal Tiwari, Advocate
versus

KISHAN SARRAF & ORS Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **18.04.2022**

1. The impugned order, in this case, is dated 30th November, 2015. It appears that this order was initially challenged before this Court after nearly three years by way of CM (M) 355/2018.
2. There is no explanation as to why CM (M) 355/2018 was filed after three years of the passing of the impugned order.
3. CM (M) 355/2018 was disposed of by an order dated 2nd April, 2018, permitting learned Counsel for the appellant (the petitioner in CM(M) 355/2018), to withdraw the petition with liberty to file a regular second appeal, if so advised in accordance with the law.
4. Leave and liberty was granted as aforesaid and CM(M) 355/2018 was permitted to be withdrawn.

5. This appeal has come to be filed, thereafter, on 23rd September, 2019, as fairly acknowledged by learned Counsel for the appellant.

6. The appeal is accompanied by an application under Section 5 of the Limitation Act 1963, which seeks to explain the delay in filing of the present appeal essentially by pleading indigence.

7. The only explanation for the delay between 2nd April, 2018 and September, 2019 when the present appeal was filed, is contained in para 12 of the application for condonation of delay, which reads thus:

“12. That the appellant filed a Civil Suit (Main) but the same was dismissed with liberty to file Regular Second Appeal on 02-04-2018. It is pertinent to mention here that the appellant was suffering from different old age ailments and for the same reason he was not able to approach in court for signing the Regular Second Appeal.”

8. The appellant has, therefore, pleaded only the “different old age ailments”. There is not a whisper as to any specific ailment from which the appellant was suffering. It is relevant to note, in this context, that at the time of making the aforesaid averments, the appellant was 61 years of age, as per the affidavit filed with the application.

9. The indolence exhibited by the appellant does not appear to have been limited to filing of proceedings before this Court. This matter was listed on 14th October, 2019, 12th March, 2020, 6th January, 2021 and 11th November, 2021. There was no appearance on behalf of the appellant throughout.

10. It was for the first time on the 5th date of hearing i.e. 4th January, 2022, that counsel appeared and sought an adjournment on the ground that the main counsel for the appellant was not available. This Court, therefore, in its order dated 4th January, 2022, noting the fact that the appeal was filed after a delay of 757 days, and after re-filing delay of 223 days and that there had been no appearance on behalf of appellant on any prior date of hearing, granted a final opportunity to the appellant to make submissions, specifically directing that the counsel for the appellant should be ready to argue the matter on the next date.

11. Today, learned Counsel for the appellant appears and again seeks an adjournment in order to obtain instructions from his client.

12. Indolence, beyond a point, results in forfeiture of the right to secure justice. The process of the court cannot be held at ransom, awaiting the convenience of the appellant.

13. It is unfortunate that, despite the tenor of the order dated 4th January, 2022, the appellant has still not deemed it appropriate to suitably instruct counsel who is appearing on his behalf today, who submits that he has been recently engaged by the appellant.

14. Clearly, the appellant is not serious about prosecuting this matter.

15. This Court cannot afford to give unlimited adjournments to the

appellant.

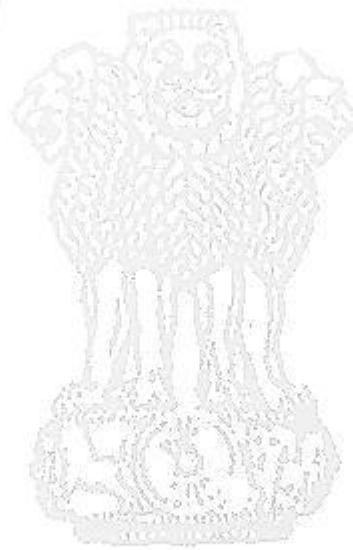
16. There being no reasonable explanation for the delay in preferring the present appeal, and learned Counsel being unable to assist the court in this regard, the appeal is dismissed on the ground of delay and non-prosecution.

C. HARI SHANKAR, J.

APRIL 18, 2022

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HIGH COURT OF DELHI



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