

**BHARATIYA STATE BANK SUB-STAFF CO-OPERATIVE
GROUP HOUSING SOCIETY**

29.01.2024

Present : Sh. Gaurav, Id counsel for the appellant through VC.
Proxy counsel for respondent.

Vakalatnama is filed on behalf of respondent.

Counsel for the appellant seeks pass over of the matter.

As requested matter is passed over.

At 12:05 PM

Present : Sh. Gaurav, Id counsel for the appellant through VC.
Proxy counsel for respondent.

The counsel for the appellant stated that his application seeking condonation of delay in filing the appeal be decided today itself as the execution matter is coming on tomorrow before the Id. Trial Court. Submission on the application are heard.

The respondent filed the suit for permanent and mandatory injunction on 22.04.2016 in which the appellant were served and filed their written statement which was beyond prescribed period and their application under Order 8 Rule 1 CPC was dismissed. The matter was proceeded further and trial was completed and vide judgment dated 30.10.2019 the suit was

decreed in favour of respondent thereby passing a decree of mandatory injunction directing the appellants to remove the flower pots and demolish the illegal wall/banna raised in the open space in front of flat no. 19, SBI Colony, near Sant Nagar, Pitampura Delhi 34 and by way of decree of permanent injunction they were restrained from continuing any commercial activity and from parking their two scooters and three cars in a manner to obstruct the free passage to the residence of the society in front of aforesaid flat.

The respondent filed the execution petition and upon service of the notice of the petition the appellant filed the application under Order 9 Rule 13 CPC which was dismissed by the court of Ld. Civil Judge North West vide order dated 11.05.2023. The appellants preferred appeal against the said order which was dismissed by the court of Ld. ADJ-02, North West Rohini Courts Delhi vide order dated 03.01.2024.

The present appeal has been filed on 16.01.2024 challenging the judgment decree dated 30.10.2019 passed by the court of Ld. Civil Judge North West with the application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal. It is the contention of the counsel appearing for the respondent that the reason mentioned in the application are the same which were taken by the appellant in their application under Order 9 Rule 13 CPC and that said contention has not been found sufficient by the courts. It is stated that there is no ground to condone the delay in filing the appeal and reliance is placed upon Civil Appeal No. 8898 of 2019 N. Mohan Vs. R. Madhu passed by the Hon'ble Supreme Court of India.

It is the contention of the counsel for the applicants that as this is first appeal so liberal approach is to be taken by this court while condoning the delay in its filing. Reliance is placed upon Civil Appeal No. 4628 of 2023 Raheem Shah & Anr vs. Govind Singh & Ors passed by Hon'ble Supreme Court of India.

After going through the facts of the case and the case laws where the present appeal is the first appeal which is a statutory right available to the appellants by adopting liberal approach the delay in filing the appeal is condoned and appeal is taken on file for its decision on merits.

The application has been filed by the appellants for stay on the judgment dated 30.10.2019 and execution proceedings.

The appellant has not mentioned in the appeal duly supported with affidavit that no flower pots have been put or no vehicle has been parked by them in front of the flat thereby obstructing the free passage to the resident of society. It is also not pleaded that the flat is not in use for any commercial activity. The appellants have also not pleaded that no illegal wall has been raised/constructed by them in front of the said flat. The counsel appearing for the appellants through VC stated that appellants can file their affidavit if opportunity is provided. It is stated that at present police is available at the flat of appellants.

Considering the facts, the appellants are granted time to file their affidavits for the aforesaid activities and if any of such activity is at their flat to remove it themselves and the respondent/decreed holder may get the suit property videographed to put their case properly if the said activities are still continuing

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in front of the flat no. 19. Meanwhile coercive action to remove the flower pots, boundary wall, vehicles be not taken till tomorrow.

Put up on **30.01.2024** for further proceedings.

Copy of the order be provided to the counsels for both the parties and be also uploaded on the Internet forthwith.

(SUNIL CHAUDHARY)
ADJ-04, North West,
Rohini Courts, Delhi
29.01.2024