

**(2013) 08 DEL CK 0363**

**Delhi High Court**

**Case No:** Regular First Appeal No. 371 of 2013

Sh. Nikhilesh Kumar

APPELLANT

Vs

Harsha Chitranshi

RESPONDENT

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**Date of Decision:** Aug. 13, 2013

**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Limitation Act, 1963 - Section 14

**Citation:** (2013) 7 AD 602

**Hon'ble Judges:** Rajiv Sahai Endlaw, J

**Bench:** Single Bench

**Advocate:** Sanjeet Singh, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Rajiv Sahai Endlaw, J.

CM No. 12361/2013 (for exemption)

1. Allowed, subject to just exceptions. The application is disposed of.

RFA 371/2013, CM No. 12362/2013 (for condonation of 329 days delay in filing the appeal), CM No. 12363/2013 (for extension of time for making up deficiency in Court Fees) and CM No. 12364/2013 (for condonation of 8 days delay in re-filing)

2. The appeal impugns the order (dated 07.04.2012 in Suit No. 407/2010 of the Court of Additional District Judge, South-West, New Delhi) of rejection of plaint in a suit filed by the appellant for recovery of Rs. 3,74,000/- from the respondent.

3. The appellant is an Advocate and the respondent a partner of a Law Firm in the name of Akash Chitranshi & Associates which was earlier a sole proprietary of Mr. Akash Chitranshi, Advocate who died a sudden and young death on 16.10.2008. It is informed that the law practice was attempted to be continued by the respondent

who is the brother of Mr. Akash Chittranshi. It is further informed that the said effort did not succeed and the law firm closed within one and a half years of the demise of Mr. Akash Chittranshi.

4. The claim of the appellant is for his emoluments/remuneration for the period the brother of Mr. Akash Chittranshi was attempting to continue the law practice.

5. The reason given for the long delay of 329 days in preferring the appeal is that the appellant had preferred a Civil Miscellaneous (Main) petition under Article 227 of the Constitution of India before this Court against the order of rejection of the plaint and of which notice was issued and which remained pending till 02.05.2013 when the appellant withdrew the same with liberty to take appropriate legal remedy as permitted by law. The appellant has invoked Section 14 of the Limitation Act, 1963 for excluding the time during which the said CM(M) petition remained pending before this Court.

6. This appeal was filed on 31.05.2013 i.e. after a period of nearly 28 days of withdrawing the CM (M) petition. The stamp of the Registry shows that the appeal was returned with objections on 30.06.2013 and was thereafter filed on 01.08.2013 and lastly on 08.08.2013.

7. As per the Rules of this Court, the appeal upon return with objections was required to be re-filed within seven days and any re-filing after 30 days is to be construed as a fresh filing. The appeal as aforesaid, after return on 30.06.2013 was re-filed only on 07.08.2013 i.e. beyond the period of 30 days. The filing on 01.08.2013 was thus a fresh filing and not re-filing and no benefit can be taken of filing on 31.05.2013. There is no explanation for the delay between 02.05.2013 & 31.05.2013 or delay between 30.06.2013 & 01.08.2013.

8. Even now as aforesaid, the listing is subject to the application for extension of time for making up the deficiency in Court Fees. There is no reason whatsoever stated for appropriate Court Fee having not been affixed on the application.

9. As far as the reasons given for condonation of delay is concerned, the appellant here is an advocate and the ground of, wrong advise having been given to the appellant that a CM(M) petition and not an RFA lies against the order of rejection of the plaint is not available to him. Even otherwise it has not been stated as to who had rendered the said advise and what action the appellant has taken against the person/advocate who has given the wrong advise. No order sheet of the CM(M) petition is annexed to the applications to demonstrate as to when objection to maintainability was taken first and for how much time thereafter the appellant continued to pursue the CM (M) petition.

10. The appellant, in this proceeding, is seeking recovery of his dues for professional service as an Advocate, from another advocate, I am not satisfied with the explanation given for the delay. As aforesaid, the appellant claims to have been

associated, earlier as a paralegal with Mr. Akash Chittranshi, Advocate. The attempt of the brother of Mr. Akash Chittranshi to continue the law practice was dependent upon the legal acumen of the others in the office including the appellant and it is obvious that the efforts comprising inter alia of the appellant was not able to retain the clients. Not only were the services of the appellant not able to retain the clients, the appellant thereafter also without studying the law, filed the CM(M) petition which was not maintainable in law and was ultimately withdrawn.

11. On enquiry, it is told that Mr. Akash Chittranshi is survived by a widow and a minor daughter.

12. On consideration of all the facts and circumstances, I do not deem this to be a fit case for condonation of the delay in filing and re-filing the appeal.

13. Though these applications ought to have been considered after the appellant had made up the deficiency in Court Fees but having regard to the fact that the appellant is also from the legal fraternity and in the hope that this litigation is not pursued further, the appellant has not been asked to make up the deficiency in Court Fees before being entitled to hearing on these applications. Accordingly, the applications for condonation of delay in filing and re-filing the appeal are dismissed and resultantly, the appeal is also dismissed. However, no order as to costs.

Decree sheet be prepared.