

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 11140 OF 2017

(Arising out of S.L.P. (Civil) No.9750/2017)

VANDANA GUPTA & ORS. .. APPELLANT(S)

Versus

SUNIL KUMAR GUPTA .. RESPONDENT(S)

O R D E R

1. Leave granted.

2. The appellants have come against an order dated 8th November, 2016 passed by the High Court of Uttarakhand at Nainital by which a delay of 1306 days in filing the First Appeal before the High Court has been condoned. The High Court condoned the delay stating thus:

"It has been argued that all the respondents presented their affidavits favourably for Mr. Sunil Kumar Gupta but some time, they turned hostile and retracted from their stand and filed the objections dated 3rd December, 2011 against such registration.

So, this was the crucial point impelling Mr. Sunil Kumar Gupta to file present appeal before the appropriate forum. I think the delay in preferring this appeal was on account of mutual trust, belief, love, affection, sanctity and confidence of the relations between the two real brothers and not like the employer and employee as the case was of Londhe Prakash Bhagwan, so cited by learned counsel for the respondents or a company as in the case of Oriental Aroma Chemical Industries Case because when the real brother ponders that if so many papers with oral assurance at the part of Mr. Akhil Kumar Gupta were there, then there was no need for him to prefer an appeal.

I think considering this aspect, which is not equitable at all, I condone the delay of 1306 days, as indicated above, in preferring this appeal.

Delay condonation application (CLMA 579/2013) is accordingly allowed."

3. It can be seen that even if one is to take 03.12.2011 as the date on which the respondents were alerted to the hostility of the other side, there is unexplained delay of over one year in filing the First Appeal. However, learned counsel appearing on behalf of the respondent has stated that the delay would only be about three months because mutation was actually effected only in September, 2012. It is difficult for us to countenance such a plea. It is clear to us that there is inordinate and unexplained delay by the respondent in filing the First Appeal, and the High Court was wrong in condoning the said delay.

4. Therefore, the impugned judgment of the High Court is set aside and the appeal is allowed.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[SANJAY KISHAN KAUL]

NEW DELHI,
SEPTEMBER 01, 2017.

ITEM NO.39

COURT NO.12

SECTION X

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 (C) No(s). 9750/2017

(Arising out of impugned final judgment and order dated 08-11-2016 in CLMA No. 579/2013 08-11-2016 in FA No. 12/2013 passed by the High Court of Uttarakhand at Nainital)

VANDANA GUPTA

Petitioner(s)

VERSUS

SUNIL KUMAR GUPTA

Respondent(s)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 2/2017

FOR EXEMPTION FROM FILING O.T. ON IA 3/2017 and IA No.81398/2017-EXEMPTION FROM FILING O.T.)

Date : 01-09-2017 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Himanshu Pal, Adv.
Mr. Siddhartha Iyer, Adv.
Ms. Ila Haldia, Adv.
Mr. Vishwa Pal Singh, AOR

For Respondent(s) Mr. Arvind S. Avhad, AOR

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

Leave granted.

The appeal is allowed in terms of the signed order.

(USHA RANI BHARDWAJ)
AR CUM PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

Signed order is placed on the file.