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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % *Date of Decision: 19.07.2023*

+ RFA(OS) 59/2019 & CM APPL. 19452/2022

MONIKA GUPTA Appellant

Through: Mr. Shiv Charan & Mr. Imran
 Khan, Advs.

Versus

SANJAY BANSAL Respondent

Through: Mr. Neeraj Kumar, Adv. for CM
 APPL No. 19452/2022.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM APPL. 51989/2019

1. The appellant has filed the present application seeking condonation of delay of 1969 days in filing the present appeal.

2. The petitioner has preferred the present intra-court appeal against an order dated 27.08.2014 (hereafter '**the impugned order**') passed by the learned Single Judge, whereby the respondent's suit for specific performance was decreed. The impugned order indicates that the parties had entered into an Agreement to Sell of a plot of land described as Plot No.68, measuring 50.40 sq. mt., Pocket-11, Block-G, Sector-11, Rohini, New Delhi-110085 (hereafter '**the suit property**') for a sale consideration of ₹80,00,000/- (Rupees Eighty Lakhs). The plaintiff claimed that it had paid the appellant/defendant a sum of ₹50,00,000/- (Rupees Fifty Lakhs) on 07.05.2012 – the date on which the Agreement



to Sell was entered into. The remaining consideration of ₹30,00,000/- (Rupees Thirty Lakhs) was required to be paid on or before 15.05.2012 at the time of execution of the Sale Deed. The learned Single Judge noted that despite sufficient opportunity, the defendant/appellant had not filed a written statement and the same was not on record. The appellant had also not appeared before the concerned court on the dates when the suit was taken up for consideration.

3. Resultantly, the learned Single Judge had decreed the suit and directed specific performance of the Agreement to Sell dated 07.05.2012 as prayed for by the respondent/plaintiff.

4. The appellant had filed the present appeal on 20.04.2019. It was the appellant's case that it was diligently pursuing its petition for review of the impugned order before the learned Single Judge and therefore, the delay in filing the present appeal ought to be condoned. However, the facts, as obtaining in the present case, indicate that the petitioner was not diligently pursuing its review petition (Review Petition no.497/2014). First of all, the said review petition was filed on 11.11.2014. This was beyond the period of limitation but the said delay was condoned. The review petition was finally dismissed on 13.03.2019 as the appellant had not appeared before the Court.

5. The learned counsel appearing for the appellant submits that the delay in the proceedings relating to the review petition was largely on account of the respondent not filing the reply despite being afforded sufficient opportunities.

6. The affidavit filed by the appellant indicates that the respondent



had filed its reply to the review petition before 17.10.2017. The appellant claims that it become aware of the same on 17.10.2017 and sought time to file a rejoinder. However, despite repeated opportunities, the appellant did not file the rejoinder to the review petition. The affidavit of compliance dated 03.12.2019 filed by the appellant indicates that the proceedings relating to the review petition were adjourned on 22.12.2017 and 19.01.2018, to enable the appellant to file a rejoinder but the same was not filed. Finally, the right of the appellant to file the rejoinder was closed and the review petition was listed on 15.02.2018 for directions. On that date, the appellant once again sought time to file a rejoinder which was granted and the review petition was re-notified for hearing on 09.04.2018. However, on that date, the appellant's rejoinder was not on record. Thereafter, the hearings of the review petition were adjourned at joint request on 04.09.2018 and 29.11.2018 and the review petition was listed on 13.03.2019. On that date, the learned Single Judge dismissed the review petition as none had appeared on behalf of the appellant.

7. The learned counsel appearing for the appellant referred to the decision in the case of *DSR Steel (Private) Limited v. State of Rajasthan & Ors.: (2012) 6 SCC 782* in support of his contention that the period spent by the party in pursuing the review petition is required to be excluded from consideration for condonation of delay in filing the appeal. He drew the attention of this Court to paragraph 25.3 of the said decision, which reads as under:-

“25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal



but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.”

8. The said decision is of no assistance to the appellant. On the contrary, the Court has specified that the time taken by the party in diligently pursuing the remedy of review in appropriate cases be excluded. In this case, we find that the appellant was lackadaisical in pursuing its review petition and we are unable to accept that the appellant has pursued the review petition diligently.

9. It is clear that there is an inordinate delay in filing the present appeal and we find no ground to condone the same.

10. The appeal is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 19, 2023/Ch