

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2408 OF 2009

(Arising out of S.L.P. (C) No.14755 of 2007)

R. Handa

...Appellant(s)

Versus

**M/s. Abhaya Land and Finance Pvt. Ltd.
and Ors.**

...Respondent(s)

O R D E R

Leave granted.

Nobody has appeared on behalf of the respondent in spite of service of notice.

Heard learned counsel for the appellant.

The suit filed by respondent No.1 for declaring him to be the absolute owner of property consisting of six flats and restraining the appellant and respondent Nos.2 to 8 from interfering with the suit property was decreed by the Trial Court on 29.9.2000. The appeal preferred by the appellant was dismissed by the High Court as barred by time on the premise that cause shown by him for condonation of 212 days delay was not sufficient. Hence, this appeal by special leave.

We have carefully gone through the averments contained in the application filed by the appellant for condonation of delay in filing appeal against the judgment and decree of the Trial Court and are satisfied that the cause shown by the appellant was sufficient. The fact that the appellant had participated in two wars waged by Pakistan

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in 1965 and 1971 and also provided guidance to the forces during Pakistan's invasion in Siachen area in 1996 were not controverted by respondent No.1. Likewise, the fact that he had gone to Jammu-Tawi area in 1996 and stayed there for four to five months for assisting the army had not been disputed. In this view of the matter, the High Court should have, instead of dismissing the appeal as barred by limitation, condoned the delay.

Accordingly, the appeal is allowed, impugned order is set aside and delay in filing appeal by the appellant against the judgment and decree of the Trial Court is condoned. Now, the High Court shall dispose of the first appeal on merits after giving opportunity of hearing to the parties.

New Delhi,
April 13, 2009.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.



JUDGMENT