

02.

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 332/2009

% Judgment Delivered on: 14.09.2010

MERX EXPONERE Appellant

Through : Mr. Deepak Bhattacharya and
Mr. Rajesh Kumar, Advs.

versus

SUBIR RANJAN CHAKRABARTY Respondent

Through : Mr. Vipin K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment? **Yes**
2. To be referred to Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

G.S.SISTANI, J. (ORAL)

CM NO.13417/2009

1. This is an application filed by the appellant under Section 5 of the Limitation Act seeking condonation of 2628 days delay in filing the present appeal.
2. The brief facts, necessary for disposal of the present application, are that the appellant (plaintiff before the trial court) had filed a suit for recovery of ₹ 209146/- against the respondents. During the pendency of the suit, the appellant filed an application under Order I Rule 10 CPC seeking to implead one Mr. Sandip Ray as a party in view of the fact that initial transaction was with a sole proprietorship firm, of which Sh. Sandeep Ray was the sole proprietor. The sole

proprietorship concern was thereafter converted to a private company, which filed the suit before the trial court. The trial court dismissed the said application vide order dated 13.12.2000. Aggrieved by the order of dismissal of the said application, the appellant herein filed a revision petition which was registered as Civil Revision No.542/2001. It is not in dispute that along with the said revision petition the petitioner had made an application seeking stay of further proceedings before the trial court. While issuing notice in the civil revision petition on 18.7.2001 no interim stay was granted. In view thereof, the proceedings in the suit continued before the trial court; parties led their evidence; addressed arguments and the final judgment was delivered on 15.12.2001. Meanwhile the civil revision petition continued to remain pending. The appellant on 16.3.2007 made a statement before the High Court seeking leave to withdraw the said civil revision petition with liberty to make an application under Order VI Rule 17 CPC for amendment of the plaint before the trial court. The appellant thereafter filed an application under Order VI Rule 17 CPC on 16.4.2007 before the trial court, which was dismissed on 6.7.2007. On 13.8.2007, the appellant filed a review petition under Order 47 Rule 1 CPC seeking review of the order dated 6.7.2007, which petition was finally dismissed on 2.6.2008. The

appellant thereafter filed the present appeal in the month of May, 2009 along with an application for condonation of delay.

3. The first submission of learned counsel for the appellant is that the appellant was prevented from filing the appeal for cogent reasons as during the pendency of the suit a civil revision petition was filed by the appellant herein. Counsel further submits that appellant in all bona fides was diligently pursuing the revision petition and the time spent in pursuing the civil revision should be deducted. Counsel also submits that the appellant was under the bona fide impression that since a revision petition had been filed and till such time the revision petition would not be decided, it was not necessary to file an appeal. Counsel next submits that the appellant was hopeful that the revision petition would be decided in his favour and in any case the plaint would have to be amended and the matter heard thereafter. It is submitted that even after the revision petition was withdrawn the appellant approached the trial court at the earliest by filing an application for amendment of the plaint, which was dismissed and a review petition was filed, which was also dismissed.
4. Learned counsel for the appellant has placed reliance on ***Municipal Corporation of Ahmedabad through the Municipal Commissioner v. Voltas Limited and etc.***, reported at AIR 1995 Gujarat 29 in support of his argument that the expression “sufficient cause” is to be construed

liberally and with a view to subserve the ends of justice. Counsel for the appellant submits that in case the Court is satisfied that the cause for delay is sufficient it may condone even a long delay. Strong reliance has been placed by counsel for the appellant on the judgment rendered in case of **Collector, Land Acquisition, Anantnag and Another v. Mt. Katiji and Others**, reported at AIR 1987 Supreme Court 1353, more particularly para 3, which is reproduced below to canvass his argument that ordinarily a litigant does not stand to the benefit by filing an appeal late and further refusing to condone delay in a meritorious matter can cause the ends of justice being defeated.

“3. The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends.”

5. Counsel for the appellant has also relied upon **Bhagmal v. M.P. Cooperative Marketing & Consumer Federation Ltd. & Others**, reported at AIR (2003) 11 SCC 727, to buttress his argument that even the delay of six years was condoned for sufficient reasons. Another submission made by counsel for the appellant is that pendency of the revision petition would also amount to filing of an appeal by the appellant as a revisionary jurisdiction can also be considered as part of appellate jurisdiction as held in the case of

Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat, AIR 1970 Supreme Court 1.

6. The present application for condonation of delay has been opposed by counsel for the respondents on the ground that the application for condonation of delay does not disclose sufficient grounds for condoning the delay.
7. It is contended by counsel for the respondents that the appellant has been extremely careless in pursuing his matter inasmuch that even a revision petition assailing the order passed by the trial court was not filed within the prescribed period of limitation. It is further contended that the revision petition was also dismissed for non-prosecution and was subsequently restored. It is also contended that once the judgment and decree was passed on 15.12.2001 in the presence of the appellant there can be no explanation as to why the appeal was filed after a gap of 2628 days. It is next contended that in the absence of any stay of the proceedings in the civil revision the only remedy available to the appellant was to assail the judgment and decree.
8. Learned counsel for the respondents submits that the revision petition, even otherwise, was not decided on merits. Reading of the order dated 16.3.2007 passed in the revision petition would show that a statement was made by counsel for the petitioner (appellant herein) that he wishes to withdraw the revision petition to enable him to amend the

plaint. It is further submitted by counsel for the respondents that on 16.3.2007 counsel for the respondent was not present and the respondent had appeared in person and in case the counsel for the appellant had brought it to the notice of the court that the suit already stands dismissed on 15.12.2001, the order of 16.3.2007 would not have been passed as it is settled law that after the dismissal of the suit the plaint cannot be amended. It is also submitted that in view thereof no advantage can be derived by the appellant of the order dated 16.3.2007. It is next submitted that by filing the application for amendment and thereafter filing a review petition, the appellant is to be blamed for the delay which has been caused. Even otherwise, after the dismissal of the review application on 2.6.2008 there is no plausible explanation for not filing the appeal uptill May, 2009. The sequence of events would, thus, show that there was complete inaction on the part of the appellant.

9. Learned counsel for the respondent has placed reliance on ***Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and Another***, reported at AIR (2010) 5 SCC 459, more particularly, paras 14 and 15, which are reproduced below:

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea

is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression “sufficient cause” employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate – *Collector (L.A.) v. Katiji*, (1987) 2 SCC 107, *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123 and *10 Vedabai v. Shantaram Baburao Patil* (2001) 9 SCC 106.

10. I have heard counsel for the parties, perused the orders passed by the trial court and given my thoughtful consideration to the matter. Basic facts are not in dispute that during the pendency of the suit an application was filed by the appellant herein under Order I Rule 10 CPC, which was dismissed by the trial court by an order dated 13.12.2000. The appellant filed a Civil Revision Petition No.542/2001 in which notice was issued on 18.7.2001 but no stay was granted. The appellant (plaintiff before the trial court) continued to pursue the civil suit which was pending in the trial court. Evidence was led, arguments were heard and thereafter judgment and decree was passed on 15.12.2001, by which the suit of the appellant was dismissed. In view of

the fact that the suit was decided by the trial court, the civil revision petition filed by the appellant herein became infructuous. The appellant did not take any steps to file an appeal assailing the judgment and decree dated 15.12.2001. A subsequent application was filed by the appellant on 18.1.2002 wherein a prayer was made for calling of the records of Suit No.160/1998 decided by learned Additional District Judge and also stay the operation of the judgment dated 15.12.2001. Counsel for the appellant has drawn the attention of the Court to the order passed by the High Court on this application, which reads as under:

"29-01-2002

*Present: Mr. Deepak Bhattacharya with Mr. S.P. Bhatia
& Ms. Seema Sharma for the petitioner.*

CM No.203/2002.

Allowed. Trial court record be summoned for the date fixed.

CM No.204/2002 (Exemption)

Allowed subject to all just exceptions. CM stands disposed of.

CR 542/2001 & CMs 1167-68/2001, 1677/2001.

Renotify on 22nd May, 2002.

*January 29, 2002
Rds"*

R.C. Jain, J.

11. A weak argument, has sought to be raised by counsel for the appellant, that reading of the order would show that this application was allowed as the order would suggest and thus the appeal would have been filed within the time allowed.

Reading of the order would show that the trial court had only allowed the application to the extent that trial court record was to be summoned for the date fixed. In view of the fact that once the suit had been dismissed no order could have been passed in the revision petition. It may further be noticed that the orders passed by the High Court in the revision petition as also copy of the application [CM NO.203/2002] which has been handed over in Court in form of a compilation would show that the appellant was conscious of the fact that by passing the final judgment and decree dated 15.12.2001 the revision petition had been rendered infructuous. Para 5 of this application reads as under

"5. That this Revision Petition has been rendered infructuous by arbitrary decision of the lower court in not agreeing to stay the proceedings pending disposal of this Revision Petition and finally dismissing the suit. This has led to serious miscarriage of justice. That it will be in the interest of justice if this Hon'ble Court may call for the record of the case in Suit no.168/1998 decided by the court of learned ADJ, Delhi, Shri Raghbir Singh, and in the meanwhile pass appropriate orders staying the operation of the judgment dated 15.12.2001 of the court of learned ADJ, Delhi, Shri Raghbir Singh, pending disposal of the subject Revision petition no.542 of 2001."

12. Even, at this point of time, the appellant did not take any steps to safeguard his own interest by filing an appeal.
13. No doubt it has repeatedly been held by the Apex court that while dealing with an application for condonation of delay a liberal approach should be taken in the matter provided the Court is satisfied that a person was prevented from sufficient

cause in filing the appeal and the delay was not caused on account of inaction, mala fides or carelessness. It has also been held that not each and every application filed for condonation of delay is to be allowed. In the case of ***Oriental Chemicals Aroma Chemical Industries*** (supra), a recent decision of the Apex Court, it has been held that a liberal approach should be taken in condoning the delay of short duration and a stricter approach should be taken in case of inordinate delay. The appellant was conscious of the fact that in the civil revision petition which had been filed no stay of proceedings was granted. The appellant continued to participate in the proceedings before the trial court and a decision was rendered by the trial court on 15.12.2001. For reasons best known no appeal was preferred and the appellant continued to participate in the revision petition knowing fully well that the same had been rendered infructuous. Even otherwise, the revision petition was not decided on merits and was simply withdrawn with liberty to file an application for amendment which was obviously not maintainable once the suit has been finally adjudicated upon and decided.

14. In a recent decision rendered by the Supreme Court of India in ***Balwant Singh vs. Jagdish Singh & Ors.***, reported at 2010 (6) SCALE 749, while deciding an application under

Order XXII Rule 9 CPC and Section 5 of the Limitation Act, it was held as under:

13. ... We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party. In the case of *State of Bihar v. Kameshwar Prasad Singh* [(2000) 9 SCC 94], this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned

to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications. In the case of *Ramlal and Others v. Rewa Coalfields Ltd.*, [AIR1962 SC 361] this Court took the view:

"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chathappan*, ILR 13 Mad 269.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration;..."

15. While dealing with an application for condonation of delay under Section 5 of the Limitation Act, the Court must bear in

mind two important considerations. Firstly, the expiration of limitation for filing an appeal gives rise to a legal right to a decree-holder to treat the decree as binding between the parties and this right should not be lightly disturbed. Second, if sufficient cause is shown for condonation of delay, the delay should be condoned. It has been repeatedly held by the Supreme Court of India that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice. In the same breath, it has been held that the discretion should be exercised when there is no negligence or inaction nor want of bona fides imputable to the appellant the Court must be satisfied that there was due diligence on the part of the appellant.

16. The conduct of the appellant in the present case shows total callousness and negligence. There is no explanation as to why the appellant did not assail the judgment and decree passed by the trial court and continued to pursue the civil revision, which had become infructuous even as per the understanding of the appellant himself, which is evident from the application, which was filed by the appellant before the High Court and para 5 of the application has been extracted above. There is also no explanation as to why the appellant withdrew the civil revision petition on 16.3.2007 when the suit was dismissed as far back as on 15.12.2011. There is also no explanation as to why even after the dismissal of the

application for amendment of the plaint and the review petition on 2.6.2008 the appeal was filed in the month of May, 2009 after a gap of one year. Thus, this is not a fit case to condone delay of 2628 days in filing the appeal as the Court is not satisfied that the delay had occurred on account of bona fide reasons and the appellant was prevented from sufficient cause in filing the appeal. Neither there is sufficient cause for condonation of delay nor the conduct of the appellant is such, which would convince this court to take away the right, which has accrued in favour of the respondent herein by the dismissal of the suit.

17. Accordingly, application stands dismissed.

RFA NO.332/2009.

18. In view of the orders passed in the application for condonation of delay appeal stands dismissed.

G.S. SISTANI, J.

September 14, 2010
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