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

+ RFA 488/2008

% ***Judgment Delivered on: 09.11.2010***

NORTH DELHI POWER LTD. Appellant
Through : Mr. K. Datta, Adv.

versus

AAR ESS INDUSTRIES Respondent
Through : Mr. Sunil Malhotra, 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.17961/2008.

1. This is an application filed by the appellant under Section 5 of the Limitation Act seeking condonation of 85 days delay in filing the present appeal against the judgment dated 09.05.2008 of learned Additional District Judge.
2. The grounds for delay have been set out in paragraphs 3 to 6 of the present application, which are reproduced below:
 - "3. That the present appeal arises out of facts and circumstances pertaining to the period of the erstwhile DVB, the predecessor-in-interest of the Appellant herein, and the Respondent had made averments regarding certain letters written to the DVB in or about March 1997. The respondent therefore diligently attempted to locate any such letters that may have a bearing on the outcome of the present Appeal and as such considerable time

and effort was spent by the Appellant during the months of August and September 2008.

4. That the Respondent had filed another Civil Suit, Suit No.66 of 1998 on absolutely the same facts as the Suit No.54 of 2004 which led to the present Appeal. The Appellant therefore, in co-ordination with its Counsels undertook a careful scrutiny of the pleadings in both the cases and also the Order Sheets/Proceedings of both the Suits to ensure that the Respondent was in effect agitating the same cause of action, if any, through two different proceedings. A substantial time was spent in the said scrutiny during the month of September 2008 and the process of drafting of the present Appeal was commenced immediately thereafter.
 5. That the legal opinion of the counsels was sought subsequent to locating the documents that could be found with due diligence and the verification of the records of the two Suits. The same was followed by drafting of an appropriate Appeal.
 6. In view of the festival season and the vacations of the Hon'ble Delhi High Court, the Counsel engaged in the matter was out of station for about two weeks period in the middle of the month of October 2008."
7. Learned counsel for the appellant has strongly urged before this Court that after passing of the impugned judgment dated 9.5.2008 by the trial court in Suit No.54/2004, the respondent had been locating certain letters relied upon by the respondent having written the same to the DVB in the month of March, 1997. Counsel further submits that considerable time was spent and effort was made during the months of August, 2008 till September, 2008, for locating the said letters. Counsel also submits that the respondent had filed another Suit being Suit no.66/1998 on identical facts as in Suit No.54/2004 (subject matter of the present appeal). Counsel also submits that

appellant took time in coordinating with its counsel and undertook a careful scrutiny of the pleadings in both the cases as the respondent was in effect agitating the same cause of action in two different proceedings. Counsel next submits that considerable time was also spent in scrutinizing the pleadings and thereafter in drafting the appeal, which was finally filed on 18.12.2008.

8. Learned counsel for the appellant has relied upon ***Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others***, reported at AIR 1987 Supreme Court 1353, and more particularly para 3 of the judgment, to canvass his arguments that ordinarily a litigant does not stand to benefit by lodging an appeal late and also refusing to condone delay can result in a meritorious matter being thrown out at the very threshold, defeating the cause of justice.
9. Learned counsel for the appellant submits that a liberal view should be taken in this matter and delay should be condoned.
10. Learned counsel for the respondent has vehemently opposed the present application on the ground that the application does not disclose sufficient grounds for condoning the delay. Counsel for the respondent submits that both the suits arise from a different and distinct cause of action. Counsel further submits that the ground taken with regard to pendency of two suits is baseless as both the suits were pending in the trial court and were being pursued by the appellant herein and the appellant could not have taken three months time in ascertaining the

facts in both the matters. Counsel also submits that the implication of pendency of an earlier suit should have been considered by the appellant at the time of filing of the written statement before the trial court and pendency of an earlier suit would have no effect to the filing of the present appeal.

11. I have heard counsel for the parties, who have taken me through the application and reply thereto. The basic facts are not in dispute that the judgment and decree was passed on 9.5.2008. Present appeal has been filed on 8.12.2008 after a delay of 85 days.
12. In the case of **P.K. Ramachandran Vs. State of Kerala & Anr.** (1997) 7 SCC 556, the Supreme Court has held that an essential pre-requisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.
13. In this case, it may be noticed that the judgment was rendered by the trial court on 9.5.2008. The appellant applied for the certified copy of the judgment on 14.5.2008, which was received on 27.6.2008. There is no force in the submission of learned counsel for the appellant that appeal could not be filed in time on the ground that the appellant was searching for letters pertaining to the year 1997, which were exchanged between the erstwhile DVB and the respondent, and also the fact that it took 90 days plus two and a half months to scrutinize the pleadings of two suits, which were pending in the trial court and were being pursued by the respondents.

14. 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.
15. 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 light heartedly 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;..."

16. The facts of this case are to be considered on the touchstone of the broad principles which have been laid down by the Supreme Court of India while considering the present application for condonation of delay. The conduct of the appellant in the present case shows total callousness and negligence.
17. In the case of ***Ramlal & Others v. Rewa Coal Fields Ltd.***, reported at AIR 1962 SC 36 it has been held that the court must not lose track of the fact that while passing a decree a substantial right accrues in favour of the respondent and this right should not be disturbed lightly.
18. Paragraphs 3, 4 and 5 of this application do not disclose sufficient grounds for condoning the delay. In case the objection

was to be raised by the respondents with regarding to pendency of an earlier suit this objection should have been taken by the appellant at the very first instance at the time of filing of the written statement. Even otherwise, it is not disputed that no issue has been framed as to whether the second suit is barred by *res judicata*. Neither the appellant considered it appropriate to file an application under Order VII Rule 11 CPC for dismissal of the suit of the respondent on this ground. At this belated stage, to raise these objections cannot be permitted in the absence of sufficient grounds.

19. The law laid down in the case of ***Collector, Land Acquisition, Anantnag and Another*** (supra) is not applicable to the facts of the present case, in view of the inaction and callous attitude of the appellant.
20. It has been repeatedly held that the rules of procedure are hand-mades of justice, a party should not be refused relief on account of some mistake, negligence or inadvertence. No doubt, rules of procedure are designed to facilitate justice and further its ends, however, even if a liberal approach is taken in the matter, I find that the application for condonation of delay is not bona fide. The present case is of complete inaction and negligence for which no indulgence can be given to the appellant. The grounds set out in the present application were not material for filing an appeal.
21. In view of this, present application cannot be entertained, the same is accordingly dismissed.

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22. Appeal stands dismissed in view of the orders passed in the application for condonation of delay.

November 09, 2010
'msr'

G.S. SISTANI, J.