

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

+ **RFA No.333/2011**

% **6th July, 2011**

HINDUSTAN COCA-COLA MARKETING (P) LTD. Appellant
Through: Mr. Amit Sibbal, Advocate with Mr. Paras
Chaudhary, Advocate

VERSUS

M/S. I.P. ARTS SOCIETY Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

C.M. No.12050/2011 (condonation of delay) in RFA No.333/2011

1. This is an application for condonation of delay of 411 days in filing of the Regular First Appeal against the impugned judgment and decree dated 18.1.2010, whereby the suit of the respondent/plaintiff, a performing society, for recovery of money was decreed against the appellant.

2. In order to decide this application for condonation of delay, a resume of facts of the case is necessary. The respondent/plaintiff filed a suit for recovery of Rs.3,94,200/- alongwith interest against the appellant/defendant company on the ground that the respondent/plaintiff

performed a programme for the appellant company on 14th, 15th and 16th March, 2003 at Pragati Maidan, New Delhi under the title 'RANG HI RANG COCA COLA KE SANG'. The appellant/defendant appeared in the suit and did not dispute that performance was indeed done on aforesaid dates, however, it was pleaded that contract was not with the respondent/plaintiff society but with one M/s. Tanson Entertainment Co. The appellant was proceeded ex parte repeatedly in the trial Court and which ex parte proceedings were set aside repeatedly, the last of such proceedings were set aside vide order dated 10.9.2008. In fact, the last order dated 10.9.2008 was passed on an application under Order 9 Rule 13 of Code of Civil Procedure, 1908 (CPC) whereby the ex parte judgment and decree dated 10.8.2006 was set aside. Even thereafter it appears that the lack of action of the appellant continued because no evidence was led on behalf of the appellant in spite of opportunities given and evidence of the appellant was closed by the trial Court vide order dated 7.9.2009 and whereafter the suit was decreed. It is this judgment and decree dated 18.1.2010 which is now sought to be challenged by means of the present appeal in which the subject application for condonation of delay is filed. In the impugned judgment it is mentioned that the appellant/defendant did not plead or file the alleged contract with M/s. Tanson Entertainment Co., and more importantly, no pleading made or document filed to show any payment made to M/s. Tanson Entertainment Co.

3. In order to appreciate the averments in the application for

condonation of delay, it is necessary to begin by stating that the application for condonation of delay contains, not one set of facts, but in fact chapters, with respect to various periods of delay which are sought to be 'stated'. I am deliberately using the expression 'stated' and not 'explained' because the contents are contents and narration of facts and not explanations falling within 'sufficient cause'.

4. The first period/chapter of delay would be from May, 2009 till the passing of the impugned judgment and decree on 18.1.2010 and which period pertains to failure to lead evidence on behalf of the appellant in the trial Court and non-appearance ultimately. The second period/chapter of delay/inaction is from the date of passing of the decree on 18.1.2010 till 6.9.2010 when it is stated that the appellant came to know of passing of exparte judgment on information from an official of the bank which had released the amount deposited when the application of the appellant under Order 9 Rule 13 CPC was allowed. The third chapter is then from 6.9.2010 to 1.10.2010 and during this period the certified copy of the judgment was applied on 28.9.2010 and which was delivered immediately thereafter on 1.10.2010. The next/fourth chapter is from 1.10.2010 to January, 2011 during which period the certified copy was tagged by one Mr. Vijay Verma of the appellant company in some other file and therefore the certified copy was not traceable. It is further alleged that one Mr. Gourav Goel thereafter was supervising the Court cases and who resigned and work was allocated to

other employees on ad hoc basis till Mr. Mukesh Kumar Shilavat took charge in January, 2011. The fifth chapter of delay is from the appointment of Mr. Mukesh Kumar Shilavat in January, 2011 till 24.5.2011 when it is alleged that once again the factum of the subject case came to the notice because the certified copy was traced out by Mr. Mukesh Kumar Shilavat in another case file of the appellant company.

5. It is in the aforesaid background of facts, comprising of various tranches of periods, that the application for condonation of delay has to be examined. Also is to be kept in view the fact that appellant was repeatedly proceeded ex parte in the trial Court and on one occasion an ex parte decree was set aside on an application under Order 9 Rule 13 CPC and even thereafter yet again no evidence was led.

6. In my opinion, no doubt the provision of Order 41 Rule 3A CPC providing for condonation of delay is to be liberally interpreted by the Courts, however, simultaneously it also needs to be observed that once there is clear cut negligence or want of necessary action, then merely because some facts are stated for those periods of negligence or inaction, delay cannot be condoned. It is not the period of delay which is relevant but the reason for seeking condonation because once the reason or reasons are adequate the period of delay may pale into insignificance. I must also note that the appellant is a group company of a huge multi-national chain and it admittedly has a legal department which looks after the legal cases. The

appellant is therefore not like a small or one time litigant. These observations are made by me because after a reasonable period of time there is bound to be follow up by a legal department of a huge multi-national company with its lawyers. Certain periods can surely be exempted and if liberally taken even larger period can be exempted, however, outright negligence or inaction ought not to be condoned by the Courts, inasmuch the courts have also to keep in mind the vested right which has accrued to the other side on account of lapsing of limitation.

7. The first period is from May, 2009 to January, 2010 and which period is a substantial period in itself of over seven months. Nothing has been averred in the application as to what correspondence was exchanged with the lawyers during this period from May, 2009 to January, 2010 as to what was transpiring in the case. It is not unknown that the legal department of such a huge multi-national company regularly seeks follow up from its lawyers with regard to the case and there is regular correspondence exchanged. There is not even a whisper in the application for condonation of delay as to what was the correspondence or interaction with the lawyers during this period from May, 2009 to January, 2010. Let us now take the second period i.e. from January, 2010 to September, 2010 and which further shows the unexplained negligence of the appellant and the application for condonation of delay on this ground itself can be dismissed for not giving any reasons, much less adequate explanation, even for this period

whereafter it is alleged that on 6.9.2010 the appellant came to know through its bankers with respect to impugned judgment and decree dated 18.1.2010. For this period of seven months, there is nothing whatsoever found in the application for condonation of delay that what was the endeavour made by the legal department of the appellant company to communicate with its lawyers as about the status of the case. Therefore, there is no valid explanation for condonation of delay even from January, 2010 to September, 2010 i.e. till the factum of passing of the impugned judgment and decree was known on 6.9.2010. Most surprisingly, the certified copy of the judgment was applied not immediately but after about 20 days on 26.9.2010 and which judgment and decree was thereafter immediately supplied within a period of five days i.e. by 1.10.2010 and the appeal should at least thereafter have been immediately filed, but however was not filed. The next period of delay is now from 1.10.2010. In this period, it is alleged that One Mr. Vijay Verma tagged the certified copy of the impugned judgment and decree with another case file. Even assuming the certified copy of the judgment is tagged in another case file, the same however would not mean that the appellant would not be aware of the passing of the judgment and decree and if the certified copy of the judgment was tagged with another file, the appellant should have applied for another certified copy or the appellant would have filed the appeal stating that another certified copy has been applied, however, even this has not been done. The next period is upto May,

2011, when it is alleged that Mr. Gourav Goel, who was supervising the cases, suddenly resigned from the services of the appellant company. Again what Mr. Gourav Goel did or any other officer of the appellant company did to pursue the case in this period, even assuming the certified copy was lost, is not at all explained in the application for condonation of delay. Therefore, there is no explanation whatsoever that what action was taken with respect to filing of the appeal from January, 2010 to May, 2011. In this period it is stated that one Mr. Mukesh Kumar Shilavat took over the job of Mr. Gaurav Goel. Even for this period, there is no explanation given that having come to know of passing of the exparte decree at least on 6.9.2010, why no steps were taken for filing of the appeal inasmuch as the factum of passing of the impugned judgment was admittedly known. Even assuming the certified copy of the judgment was lost, if one certified copy of the judgment and decree can be obtained, surely another certified copy of the judgment could have been applied for and obtained. However, once again there is no averment as to why, when certified copy of the judgment and decree applied for on 26.9.2010 and obtained within five days, another certified copy was not applied for and obtained. This total inaction and negligence during the entire period stated till date of filing the appeal merely because Mr. Gaurav Goel was given an ad hoc charge and Mr. Mukesh Kumar Shilavat took charge in January, 2011, is not acceptable. The final fact stated is that Mr. Mukesh Kumar Shilavat took charge in January, 2011 and on 24.5.2011 he

saw the certified copy of the judgment in another case file. Surely, and as stated above, certified copy is for the purpose of filing of the appeal including for the purpose of extending limitation period during which the certified copy applied, however, that does not mean that the appellant company could not have filed the appeal once it was known on 6.9.2010 that the impugned judgment was passed. The alleged tagging of the certified copy with another file cannot mean that the file itself of the present case would have got misplaced or lost.

8. Learned counsel for the appellant sought to place reliance upon a decision of the Supreme Court reported as ***N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** in support of the proposition that Courts have taken a liberal approach for condonation of delay. There is no quarrel with this proposition and there is no doubt that there should be a liberal attitude and there is always some sort of negligence once there is an application for condonation of delay, however, this judgment and in my respective opinion, no other judgment of the Supreme Court, lays down that total negligence and inaction of the party as found in the facts of the present case ought to be condoned. Issue of condonation of delay is case and facts specific.

9. In view of the above, there is no ground for condonation of delay for the period from May, 2009 to May, 2011. The application for condonation of delay is therefore dismissed.

+ RFA No.333/2011, C.M. Nos.12049/2011 (stay), 12051/2011 (extension of time) and 12052/2011 (Additional documents)

Since the application for condonation of delay is dismissed, this appeal and applications do not survive and are disposed of as such.

JULY 06, 2011

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VALMIKI J. MEHTA, J.