

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

+ **CM (M) 275/2011, CM APPL. 5002/2011**

Date of Decision: 04.10.2012

STATE BANK OF PATIALA **..... Petitioner**

Through: Mr.Bharat Arora, Adv.

Versus

ANANT RAJ AGENCIES PROPERTIES **..... Respondents**

Through: Mr.Raman Kapoor, Sr. Advocate
with Ms Biji Rajesh and Eshita
Baruah, Advocates.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This petition under Article 227 of the Constitution is directed against the order dated 02.11.2010 whereby applications under Order 9 Rule 9 CPC and under Section 5 Limitation Act, both dated 26.05.2009 filed by the respondent/plaintiff, were allowed.

2. The respondent/plaintiff had filed a suit for possession and also for recovery of damages, *mesne profits* against the petitioner. The possession having already been delivered, *lis* remained only in respect of recovery of damages and *mesne profits*. The suit was initially filed in this Court, but the same was transferred to District Court on account of its enhanced pecuniary jurisdiction. The suit filed by the respondent/plaintiff came to be dismissed by the learned ADJ on account of non-appearance of the respondent/plaintiff on 10.02.2006. The instant

applications were filed by the respondent/plaintiff for setting aside the order dated 10.02.2006 and for restoration of the suit and also for condonation of delay in seeking restoration of the suit.

3. The learned ADJ vide the impugned order has allowed both the applications, subject to payment of cost of Rs.20,000/- by the respondent/plaintiff. The reasons as set out by the respondent/plaintiff for seeking condonation of delay and for restoration of the suit were found by the learned ADJ to be sufficient warranting condonation of delay as also for restoration of the suit. It was observed that it was mainly because of the change of counsel by the respondent/plaintiff and non return of the file by its previous counsel Mr. Harish Malhotra to the new counsel, that the respondent/plaintiff could not appear in the Court resulting in ultimate dismissal of the suit.

4. The impugned order has been assailed by the petitioner on the similar grounds which were taken before the Court of ADJ, that there was unexplained delay of 1200 days and that the respondent was extremely negligent and careless in pursuing its case. The learned counsel for the petitioner has taken me through the order sheets of the trial court record to demonstrate the negligence and carelessness of the respondent/plaintiff. To this, explanation rendered by the respondent/plaintiff is that initially his counsel was Mr. Sanjiv Sharma, who was elevated as a Member of Income Tax Tribunal, and thereafter the case was assigned to Mr. Rajneesh Vats, and then to Mr. Harish Malhotra. Mr. Harish Malhotra had his office on the ground floor of the premises of respondent firm, but, he vacated the same sometime in

January 2006 and showed his inability to prosecute the matters of the respondent/plaintiff, which were given to M/s Kanth & Associates and the files being handled by Mr. Harish Malhotra, were handed over to M/s.Kanth & Associates. However, the file of the instant case got misplaced in the process of shifting and could not be handed over to M/s Kanth & Associates. It was only on 21.05.2009 that Mr. O.P. Singh, an Advocate working in the office of Mr. Harish Malhotra, came and handed over the file of the instant case, saying the same having been now located. All these explanations given by the respondent firm are substantiated by Mr. O.P. Singh, Advocate on his affidavit as also by Mr. Anil Sarin, partner of the respondent/plaintiff.

5. Having heard the counsel for the parties and also on going through the records including the impugned order, I do not see any infirmity or illegality in the impugned order of the learned ADJ. There is no reason to disbelieve the sworn affidavit of Mr. O.P. Singh, Advocate, as also of Sh. Anil Sarin of respondent company.

6. There is no dispute with regard to the proposition of law as laid down by the Supreme Court in the case of **Salil Dutta Vs. T.M. & M.C. Pvt. Ltd. (1993) 2 SCC 185** relied upon by learned counsel for the petitioner that the respondent company could not put entire blame on advocate and try to make out as if they were totally unaware of the nature or significance of the proceedings. It was the submission of learned counsel for the petitioner, and which is not disputed, that the respondent company is a professionally managed company of educated businessmen and it could have been more vigilant and careful in pursuing its matters.

On the other hand learned counsel for the respondent stated that the respondent had filed four similar suits against the petitioner in respect of different portions of the premises and in the other three suits, the respondent had been diligent in pursuing its cases and which have finally been disposed of and maintained by the Supreme Court. On this premise, it is submitted that non-appearance of the respondent or his counsel was only due to bonafide mistake on their part. It is submitted that because of change of their counsel, they remained in bonafide belief that their case was being pursued by the counsel like the other three cases. It is submitted that there was no malafide on the part of the respondent/plaintiff and that there could not have been any reason for them to delay their own case.

7. I do find substance in the submissions of learned counsel for the respondent. Undisputedly, there has been considerable delay and for which the respondents are also to be blamed to some extent in having not been diligent and careful in pursuing their case. It is settled law that the meaning of words “sufficient cause” and its scope under Order 9 Rule 9 CPC cannot be crystallized into a rigid rule of law, but has to be exercised in each case with reference to its own special facts and with a view to secure the furtherance of justice. Unless malafides are clear largely on the conduct of the parties, generally as a normal rule, delay should be condoned. In the case of **N. Balakrishnan Vs. M. Krishnamurthy AIR 1998 SC 3222**, the Apex Court held as follows:

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section [5](#) of the

Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in regional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

8. In the case of **Radha Krishna Rai Vs. Allahabad Bank (2000) 9 SCC 733**, the Apex Court held that where the parties has been victim of misrepresentation of the facts by his own advocate and was kept under the impression that the appeal is pending, whereas no appeal was in fact filed by the advocate, it cannot be said that the appellant has been negligent in prosecuting the appeal and thus cause of action shown by the party can be said to be sufficient to justify to condone the delay in filing the appeal.

9. In the case of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and other**, AIR 1987 SC 1353, the Supreme Court held that:

“The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of the CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period) 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 of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court.”

10. In the aforesaid case of **Mst. Katiji** (supra), it was also observed by the Apex Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *malafides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

11. In view of my above discussion and being conscious of the powers of this Court under Article 227 of the Constitution, considering the facts

and circumstances of the present case, in the *pari-materia* of the decisions noticed above and with the objective of substantial justice, I am unable to persuade myself to disagree with the reasoning given by the learned ADJ in allowing the applications of the respondent/plaintiff. Needless to say that dismissing a case on technical ground of limitation, would not, in any way, benefit the interest of justice. There is no reason to presume that the delay was occasioned deliberately or on account of culpable negligence or on account of *malafides*, which are totally missing in the present case. When the respondent/plaintiff was pursuing its three other cases against the petitioner, there was no apparent reason for having not pursued this case. The non-appearance of the respondent/plaintiff was thus rightly found by the learned ADJ to be because of sufficient cause and thus condonable.

12. The learned counsel for the petitioner, however, stated that the cost as imposed by the learned ADJ was highly insufficient. To this learned counsel for the respondent had no objection to compensate the petitioner adequately.

13. In the entire factual matrix, as discussed above, the cost of Rs.20,000/-, which was imposed by the learned ADJ, stands increased to Rs.40,000/-.

14. In view of my above discussion, the petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 04, 2012/awanish