

*** HIGH COURT OF DELHI : NEW DELHI**

+ CS(OS) 1138/2008

% Judgment decided on : 27.04.2012

SHRI VIKAS GUPTA Plaintiff
Through Mr Sanjeev Agarwal, Adv.

versus

SH. ROHIT SIKRI Defendant
Through Mr Ravinder Agarwal, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

I.A. No.1338/2010 (u/o IX, R.4 CPC) and I.A. No.1342/2010 (u/s 5 of the Limitation Act), both by the plaintiff

1. The plaintiff filed the present suit for specific performance with consequential relief of injunction. The case of the plaintiff is that vide agreement to sell dated 02.12.2007 between the plaintiff and defendant, the defendant agreed to sell the suit property, i.e., part of First Floor measuring 748 sq. ft. bearing No.E-36, Naraina Vihar, New Delhi, for a total consideration of Rs.32 lac, out of which plaintiff paid to the defendant a part payment/earnest money of Rs.3 lac on 08.12.2007 and the defendant further received Rs.4 lac on 22.12.2007. As per the plaintiff, the said payments were duly acknowledged by the defendant.

2. The contention of the defendant in the written statement is
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that the plaintiff failed to pay balance amount till the last date of agreement being 31.03.2008 nor has the plaintiff filed any proof thereof. Therefore, the plaintiff is guilty of breach of contract. The plaintiff also failed to reach the concerned Sub-Registrar at the appropriate time. The plaintiff also did not pay the stamp duty. Therefore, there is no cause of action for filing the suit.

3. When the matter was listed on 13.01.2009, since no one appeared on behalf of the plaintiff, therefore, the suit was dismissed in default. Later on, the plaintiff filed an application, being I.A. No.2093/2009, under Order IX Rule 3 read with Section 151 CPC seeking restoration of the suit, which was also dismissed in default on 13.02.2009.

4. Later on, the plaintiff filed the present applications for restoration of the suit as well as for condonation of delay of more nine months in filing the application for restoration. In support of the applications, Mr Vikas Nagpal, Advocate, filed the affidavit explaining his inability to appear. The detail of the same is given paras 6 and 7 which read as under:

“6. That thereafter an application No.I.A.2093/09 was moved for restoration of the suit but the same was unfortunately dismissed on 13.2.2009 as the counsel for the plaintiff could not appear on the said date. In fact the counsel Sh. Vikas Nagpal, suffering from a serious SCAR in the brain had contacted a renowned Neuro Dr. S.K. Sogani in the last quarter of 2008 who advised him to reduce the daily dosage of the medicine but the same backfired and resulted in severe brain attacks/seizures over the next number of months and the said counsel was under severe medication/sedation/treatment and hospitalization for almost three quarters of 2009 and thus could not do any further in the above matter or appear on

13.2.2009 and mover, even the plaintiff could not be intimated of the said facts because of the neuro condition of the counsel. Copies of various medical papers/records of the counsel are enclosed herewith for the kind perusal of this Hon'ble Court.

7. That the plaintiff upon being informed of these facts after not hearing from the counsel for a long period of time has engaged the present counsel to do the needful in the matter as a huge amount of money paid by him as earnest money to the defendant is being illegally usurped by the defendant due to the aforesaid.”

5. The applications are strongly opposed by the defendant. The main contention of the defendant is that statement made in the application which is supported by affidavit of Mr. Vikas Nagpal is not correct. It is denied by the defendant that the counsel for the plaintiff could not appear due to reason of brain attack during the relevant period. In fact, the defendant has filed various orders passed by this Court from time to time which show that Mr Vikas Nagpal, Advocate was appearing in courts in various matters during the said period. Therefore, the delay in filing of application under Order IX CPC should not be condoned.

6. In the similar situation, the Supreme Court in the case of **Balwant Singh v. Jagdish Singh & Ors.; V (2010) SLT 790**, 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;...”

7. I have perused the reply filed by the defendant as well as the copies of the orders passed by this Court, which clearly show that Mr Vikas Nagpal, Advocate was appearing in Courts during the said period. Thus, the cause for non-appearance given by the plaintiff in his application is not correct and genuine. The same lacks bonafide.

8. In order to show ‘sufficient cause’ for the purpose of condonation of delay, the ground taken in the application must be true and genuine as it is the discretion of the court to condone the delay. In the present case, element of truth and fairness is missing. Thus, the plaintiff is not entitled for the benefit of discretionary jurisdiction vested in this Court, as the plaintiff has failed to give valid reasons for sufficient cause.

9. In view of the above, both the applications filed by the plaintiff are, therefore, dismissed.

MANMOHAN SINGH, J.

APRIL 27, 2012

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