

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

+ **FAO No.224 of 2013 C.M. Nos.8002-8003/2013**

Decided on : 17th May, 2013

MS/ TATA BLUE SCOPE STEEL LTD. Appellant
Through: Mr. Ashutosh Dubey & Ms. Vriti Anand,
Advts.

Versus

M/S SETHI GOLDEN TRANSPORT CO. Respondent
Through:

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellant against the order dated 16th May, 2012 passed by the learned Additional District Judge in Civil suit bearing No.282/2006 titled *M/s Sethi Golden Transport Co. Vs. M/s Tata Blue Scope Steel Ltd.* rejecting the application of the appellant under Order 7 Rule 11 CPC for rejection of the plaint on the ground of lack of territorial jurisdiction. It may be pertinent here to mention that the respondent herein had filed a suit for recovery of ₹11,55,516/- from the appellant. After completion of

the pleadings of the parties, an issue with regard to the territorial jurisdiction was framed on the basis of the objections purported to have been taken by the appellant, which reads as under:-

“Whether this Court has no jurisdiction to try the suit? OPD”

2. The onus of proof of this issue was on the defendant/appellant, however, the appellant /defendant in order to ensure that the suit for recovery does not proceed against him, chose to file an application u/O 7 Rule 11 CPC raising the plea of territorial jurisdiction as a ground of rejection of the plaint. The said application was rejected by the impugned order. Though the order was passed on 16.5.2012 but the appeal has been filed after a delay of 75 days and thereafter, it was recollected on account of objections having been raised by the registry and re-filed after the delay of 202 days.
3. I have heard the learned counsel for the appellant and gone through the record.
4. Before the appeal can be considered on merits, a party has to ensure that the appeal is to be filed within the statutory permissible

time. In the first application seeking condonation of 75 days' delay, explanation which has been given by the appellant is that the appellant is a Pune based company and the counsel on whom they were dependent for prosecuting the matter was taking his examination of the post graduate degree in Pune and therefore, was out of station. Thereafter, the courts got closed on account of summer vacation and after summer vacation when enquiries were made by the appellant in order to find out the status of the matter, the file was not traceable in the dealing section, therefore, inspection could not be conducted. It is further stated that after the file was traced, inspection was conducted and it was learnt that an application under Section 7 Rule 11 CPC has been dismissed, certified copy of the order was applied and the information was sent to Pune office of the appellant for the purpose of taking decision by the Board. On perusal of the order by the Board, the Court took a decision to file an appeal.

5. If one sees the application for condonation of delay in the first instance, there is a specific provision under Section 5 of the Limitation Act seeking condonation of delay in filing an appeal if

‘sufficient cause’ is shown. The application was to be filed u/S 5 of the Limitation Act while as, the application does not find a mention of this specific provision of law much less the word ‘sufficient cause’ has been used in the application.

6. All that has been said in the application is that the appeal could not be filed on account of these *bona fide* reasons which were neither deliberate nor intentional and the delay was occurred on account of mistake of the counsel who was pursuing his post graduate degree.
7. A perusal of the application shows that the date was 12th September, 2012 while as the affidavit of Ravindra Kumar H.Suryavanshi, the so-called corporate counsel for the appellant was dated 1st May, 2013. The application gives an impression from the pleadings that the counsel who was representing the appellant in the High Court was not interested in filing the appeal and was actually pursuing his post graduation degree while as in the affidavit which has been filed, his name has not been disclosed and the affidavit which has been annexed along with the appeal is that of one Ravindra Kumar H.Suryavanshi. The explanation which has been given does not seem to be convincing because the

appellant is a company and after entrustment of the brief to the counsel, he was oblivious about the steps which were being taken by him to pursue the matter. Even if the benefit of doubt with regard to this application, about its genuineness is given to the appellant, still the callousness of the appellant and his counsel is reflected by the fact that after filing the appeal against the impugned order along with an application of 75 days delay as the registry had raised objections to the paper book, that the file was got collected by the appellant and thereafter, the appellant slept over the matter once again, resulting in further delay of 202 days. This delay of 202 days in re-filing cannot be considered as a delay in re-filing but delay in original filing according to High Court Rules and orders when a paper book is filed in the registry and is collected for the purpose of rectification of deficiencies, the same has to be done within one week and this period may not in all exceed 30 days. It may be pertinent here to refer to Rule 5 of Chapter I Part-A (a) of Delhi High Court Rules which is as under:-

“Rule-5. Amendment– The Deputy Registrar, Assistant Registrar, In-charge of the Filing counter, may specify the objections (a copy of

which will be kept for the Court record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified u/O XLL Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken by amendment within the time allowed by the Deputy Registrar, Assistant Registrar, In-charge of the filing Counter under sub-rule (1), it shall be registered and listed before the court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Assistant Registrar, In-charge of the filing counter, under sub-rule (1) it shall be considered as fresh institution.”

8. Reliance in this regard is also placed on case titled *M/s Gautam Associates Vs. Food Corporation of India* (111) DRJ 744 wherein the delay in re-filing was treated as delay in filing. Therefore, this delay in re-filing of 202 days is to be taken as a delay in original filing along with 75 days.
9. In the application for condonation of delay in re-filing, the same mistake has been done by the counsel for the appellant as has been done in the earlier application. Inasmuch as, the application is not

filed under a specific provision of law i.e. Section 5 of the Limitation Act but is filed u/S 151 CPC. It is a settled law that whenever there is a specific provision permitting a party to take advantage of the provision, the party can file the application under the said provision only and not under a general provision.

10. In this application also, a very weird kind of explanation is given for the purpose of seeking condonation. It is stated in the application that Mr. Love Kumar Sharma, who was looking after the matter, suffered from severe Jaundice coupled with other illness because of which he could not attend the office and on inquiry in the month of June, 2013 from the office of the counsel, he found the status of the matter. It was learnt that the appeal was not re-filed after curing the defects. Immediately, thereafter another advocate was engaged. It is further stated that because of the ill-luck of the appellant, the office of the counsel was infested with massive termite infection because of which renovation work was going on and the original file of the present appeal along with entire documents and copies got mixed up with some other file and was tied up with other file. Despite efforts were made to search the

file and voluminous documents, the same was not traceable, as a result, the Clerk re-constructed the file. In the month of March-April, it was further stated that the appellant's counsel had to go to his native place to attend his grandmother who was suffering from cancer and unfortunately despite best efforts, she could not survive and the appellant had to stay back for the religious ceremonies. In mid April, 2013, it is stated that the Clerk of the counsel was looking for some documents in the batch matters file, whereupon, he found the file of the present appeal. The Clerk, immediately, re-filed the matter in the registry after rectifying the defects.

11. The explanation which has been given by the appellant seems to be all cooked up story. This is on account of the fact that if the entire sequence is seen from the date when the order was pronounced, it seems that the appellant had reconciled to the fact that as there is an issue with regard to the question of jurisdiction already framed by the court which had to be decided by the Court after the parties were permitted to adduce evidence. The appellant accepted this fact and it only belatedly wisdom dawned on the appellant that in order to delay the disposal and adjudication of the suit itself, it

would be better to file an appeal and therefore, all sought to raise pleas. The reasons given by the appellant in the application seeking condonation of delay in re-filing essentially shows complete slackness, negligence on the part of the legal department of the appellant in pursuing the matter. Merely, because another counsel was engaged, it does not mean that the entire responsibility of the appellant in pursuing the appeal timely is divested and conferred only on the counsel.

12. I feel that the bona fides of the explanation given by the appellant are totally suspect and do not inspire confidence. I accordingly, feel that the appeal of the appellant is barred by limitation and it is a gross misuse of the provisions of law and accordingly, the same is dismissed with cost of ₹10,000/-.

V.K. SHALI, J.

MAY 17, 2013
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