

In The High Court Of Judicature At Allahabad
Sitting At Lucknow

Neutral Citation No. - 2024:AHC-LKO:65945

A.F.R.

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 2509 of 2024

Petitioner :- Imperia Structures Ltd. Thru. Authorised

Representative Mr. Purushottam Tiwari

Respondent :- Ankur Sharma And 6 Others

Counsel for Petitioner :- Srajak Srivastava, Aishwarya Pratap
Singh, Nishant Mishra

Counsel for Respondent :- Sanjay Kumar Srivastava, Akshat
Kumar

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rishi Kapoor, the learned counsel for the petitioner, Sri Sanjay Kumar Srivastava, the learned counsel for the opposite parties no.1 and 2 and perused the records.
2. The opposite parties no.3 to 7 have been impleaded as proforma opposite parties and, therefore, there is no need to issue notice to them.
3. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of an order dated 30.04.2024, passed by the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 244 of 2024 whereby an application for condonation of delay of 558 days in filing the appeal has been rejected, and consequently the Appeal has also been dismissed.
4. The learned counsel for the opposite parties no.1 and 2 has raised the following preliminary objections, namely: -

- (i) The petition has been filed by an authorized signatory of the petitioner-company and none of the Directors or other principal officers of the company has come forward to file the petition. On the contrary, the directors and other principal officers of the company have been arrayed as the opposite parties no.3 to 7 to the petitioner, which shows that the directors and other principal officers of the company are opposed to filing of the petition;
- (ii) The petitioner has challenged the order dated 30.04.2024, passed by the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No.244 of 2024, whereby the National Commission has rejected the prayer for condonation of delay in filing an appeal against an order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission, U.P. in Complaint Case No.185 of 2019, but the validity of the order dated 07.09.2022, passed by the State Consumer Disputes Redressal Commission, which order was passed against the petitioner has not been challenged by the petitioner. Even if the petition is allowed, the order dated 07.09.2022, passed by the State Consumer Disputes Redressal Commission would remain in force and the order passed by this Court will be a futile order.
- (iii) Without challenging the validity of the order dated 07.09.2022, passed by the State Consumer Disputes Redressal Commission, the petitioner has sought an interim relief for staying the execution of the order dated 07.09.2022, which interim relief, not being incidental to or in aid of any main relief, cannot be granted.
- (iv) The petition was filed on 16.05.2024 and the petitioner has concealed the fact that on 09.05.2024 the counsel for the petitioner-judgment debtor in Execution Application No.93 of 2022 filed for execution of order dated 07.09.2022, had requested for grant of time for complying with the judgment and order dated 07.09.2022 by making payment of Rs.25,00,000/- on or before

17.05.2024, second installment of Rs.15,00,000/- by 27.05.2024 and the remaining amount on or before 15.06.2024. This request was accepted by the State Consumer Disputes Redressal Commission and accordingly time was granted to the petitioner for depositing the entire amount in three installments as aforesaid. A petitioner approaching this court to invoke its discretionary power of superintendence under Article 227 of the Constitution of India should come with clean hands. The aforesaid concealment made by the petitioner renders the petition liable to be dismissed.

- (v) The learned counsel for the opposite parties no.1 and 2 has further submitted that having requested for depositing the entire amount in installments which request has been accepted by the State Consumer Disputes Redressal Commission, the petitioner is estopped from challenging the validity of the execution proceedings against it.
- 5. Per contra, the learned counsel for the petitioner has submitted that the petitioner has been filed through an authorised signatory, who has been duly authorised through a resolution of the board of directors of the petitioner company, therefore the first preliminary objection is meritless. I also find that a person authorised by the board of resolution of a company can file a petition on behalf of the company. Therefore, the first preliminary objection raised by the learned Counsel for the opposite parties no. 1 and 2 is rejected.
- 6. The learned Counsel for the petitioner has submitted that the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission, U.P. in Complaint Case No.185 of 2019 stands merged in the order dated 30.04.2024, passed by the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 244 of 2024 and, therefore, there is no requirement to challenge the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission, U.P. separately.

In case the petition is allowed and the order dated 30.04.2024, passed by the National Consumer Disputes Redressal Commission is set aside, the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission, U.P. would stand set aside automatically.

7. The principal of merger has been explained by the Hon'ble Supreme Court in **Chandi Prasad v. Jagdish Prasad**: (2004) 8 SCC 724, in the following words: -

“23. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice-delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.

24. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court. When a special leave petition is dismissed summarily, doctrine of merger does not apply but when an appeal is dismissed, it does. [See V.M. Salgaocar and Bros. (P) Ltd. v. CIT (2000) 5 SCC 373]

* * *

26. In Kunhayammed [(2000) 6 SCC 359] it was observed: (SCC p. 370, para 12)

“12. ... Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of

challenge laid or which could have been laid shall have to be kept in view.”

27. The said decision has been followed by this Court in a large number of decisions including Union of India v. West Coast Paper Mills Ltd. [(2004) 2 SCC 747]

28. However, when an appeal is dismissed on the ground that delay in filing the same is not condoned, the doctrine of merger shall not apply.”

(Emphasis added)

8. In the present case, the petitioner had filed an appeal against the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission with an enormous delay of 558 days and the National Commission has rejected the application for condonation of delay in filing the appeal. The appeal was not admitted and the merits of the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission were not examined. In these circumstances, the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission did not get merged into the order dated 30.04.2024, passed by the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 244 of 2024.
9. The learned Counsel for the petitioner has submitted that the opposite parties no.1 and 2 are not ‘consumers’ as per the definition contained in Section 2-D of Consumer Protection Act, which excludes the persons who have obtained goods for resale or for any commercial purposes. He has submitted that the opposite parties no. 1 and 2 had purchased a commercial unit earmarked for establishing and running an ATM which is a commercial purpose and ,therefore, they are not consumers and the Consumer Disputes Redressal Commission had no jurisdiction over the matter.
10. The order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission did not get merged in the order dated 30.04.2024 passed by the National Consumer Disputes Redressal Commission whereby the petitioner’s application

seeking condonation of delay in filing the appeal has been rejected and the petitioner has not challenged validity of the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission. Therefore, this Court need not examine the aforesaid submission made by the learned Counsel for the petitioner regarding validity of the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission.

11. In absence of a final prayer having been made for setting aside the order dated 07.09.2022 passed by the State Consumer Disputes Redressal Commission, this Court cannot grant an interim relief staying operation of the aforesaid order, as the interim relief can only in incidental and ancillary to the final relief and its purpose is to protect the final relief from becoming infructuous. However, the issue of grant of interim relief is not of any significance, as the petition itself is being decided finally.
12. What is under challenge before this Court, is the order dated 30.04.2024 passed by the National Consumer Disputes Redressal Commission, whereby the petitioner's application seeking condonation of delay in filing the appeal, has been rejected.
13. The National Consumer Disputes Redressal Commission, New Delhi has recorded in the impugned order that in order to condone the delay the applicant has to satisfy the Commission that there was sufficient cause for preferring the first appeal after stipulated limitation period. The Commission has referred to the decisions of Hon'ble Supreme Court in the cases of **Basawaraj and another Vs. Special Land Acquisition Officer**: (2013) 14 SCC 81, **Esha Bhattcharjee Vs. Raghunathpur Nafar Academy**: (2013) 12 SCC 649 and **Sridevi Datla Vs. Union of India and others**: (2021) 5 SCC 321 and came to a conclusion that a first appeal under Consumer Protection Act has to be filed within 30 days. Although, the petitioner claimed that the order dated 07.09.2022

passed by the State Consumer Disputes Redressal Commission came to the petitioner's knowledge in August, 2023 when it was served with a notice of Execution Application No.93 of 2022, the petitioner was well represented before the State Commission and it was not an ex-parte order. Hence the plea of lack of knowledge of the order of the State Commission does not appear to be convincing. The petitioner had sought to explain the reason for delay by stating that due to Covid-19 pandemic some employees were changed, but the impugned order dated 07.09.2022 pertains to post Covid period. The petitioner had not brought on record any documents regarding this plea of change of employees in the legal department. Even if some employees of the company leave, the legal cases of the company cannot be left unattended for such a long period.

14. In view of the aforesaid discussion, the National Consumer Disputes Redressal Commission, New Delhi came to the conclusion that the reasons given for condonation of delay are not convincing.
15. Challenging the validity of the aforesaid order, the learned counsel for the petitioner has drawn attention of this court to an email communication dated 17.08.2022 sent by one Girish Chandra Upadhyay to the Managing Director of the petitioner-company tendering his resignation. This email communication does not make any mention to the post/designation held by the sender of the communication, whose email ID is advocategirish@gmail.com.
16. The learned counsel for the petitioner contends that the person who has sent this email communication was holding the post of Assistant General Manager (Legal) in the company.

17. In **Basawaraj v. Land Acquisition Officer**: (2013) 14 SCC 81, the Hon'ble Supreme Court explained the law regarding condonation of delay by stating that: -

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

14. In P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225].

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

18. In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy**: (2013) 12 SCC 649, the Hon'ble Supreme Court discussed the law regarding condonation of delay as explained in various precedents and summarized the same as follows:—

“21. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

(vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

(vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

(ix) ***The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.*** *It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

(x) ***If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.***

(xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

(xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

(a) ***An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.***

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

(Emphasis supplied)

19. In **Ajay Dabra v. Pyare Ram**, 2023 SCC OnLine SC 92, the Hon'ble Supreme Court held that:—

*“5. What we have here is a pure civil matter. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. **The appellant who seeks condonation of delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay.**”*

(Emphasis supplied)

20. In **Sheo Raj Singh (Deceased) Through Lrs. v. Union of India**, 2023 SCC OnLine SC 1278, after discussing the various precedents on the issue, the Hon'ble Supreme Court summarized the principles regarding condonation of delay in the following words:—

“29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

(Emphasis supplied)

21. When we examine the facts of the present case in light of the law relating to condonation of delay in filing appeals as explained in the above mentioned cases, we find that the State Consumer Disputes Redressal Commission, U.P. had decided Complaint Case No.185 of 2019 by means of an order dated 07.09.2022.
22. It was stated in the application seeking condonation of delay of 558 days in filing the appeal that due to Covid-19 pandemic, there was change of employees. The concerned authorized representative of the petitioner had also resigned and, therefore, the petitioner-company could not keep track of the judgment and

order dated 07.09.2022, passed by the State Consumer Disputes Redressal Commission, which came to the knowledge in the month of August, 2023, when the petitioner was served with the notice of Execution Application No.93 of 2022. The Directors of the petitioner company were under corporate commitment due to which they could not appoint a new legal team and an Advocate. It was further stated in the application that in August, 2023, a new counsel and a new Legal Manager were appointed by the petitioner-company and they decided to file an appeal. The Corporate Insolvency Resolution Process was initiated and a moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 was imposed against the company by means of an order dated 31.08.2023 passed by the National Company Law Tribunal in Company Petition IB (IBC) No. 525 of 2022. The application does not make a mention of the date till when the moratorium remained in force and the learned counsel for the petitioner has orally informed the court that moratorium remained effective till 01.02.2024. The petitioner has stated that the delay in filing appeal is not intentional.

23. The petitioner contends that the Assistant General Manager (Legal) of the company had resigned on 07.08.2022, i.e. a month prior to decision of the complaint. No other specific fact has been pleaded so as to make out a sufficient cause for the delay of 558 days in filing the appeal. The petitioner company claims to have a team of officials looking after the legal matters. In these circumstances, the resignation tendered by a single employee a month prior to decision of the complaint would not justify the delay of 558 days in filing the appeal.
24. The plea of moratorium imposed on 31.08.2023, which remained effective till 01.02.2024, i.e. for a period of five months, also does not sufficiently explain the delay of 558 days in filing the appeal.

25. It appears that the resignation of a single employee given a month prior to passing of the order dated 07.09.2022 and the imposition of moratorium for a period of five months are being set up as excuse for the inordinate delay of 558 days in filing the appeal, rather than providing a sufficient cause for the delay.
26. Therefore, this court finds that the National Consumer Disputes Redressal Commission, New Delhi has exercised its discretion in rejecting the application for condonation of delay of 558 days on sound reasons and the impugned order rejecting the application for condonation of delay in filing the First Appeal does not warrant any interference by this court in exercise of its discretionary power of superintendence under Article 227 of the Constitution of India.
27. The petition lacks merit and the same is **dismissed**.

(Subhash Vidyarthi J.)

Order Date: 23.09.2024
Ram.