

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

C.A.M.NO.14/2014 IN A.A.ST.NO.19993/2009.

M/s. Prithipal Singh and Company

-VERSUS-

Union of India and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri C.S. Kaptan, Senior Advocate for the Applicant.
Shri R.S. Sundram, Advocate for the Respondent No.1.

CORAM : SMT.VASANTI A. NAIK
AND A.M. BADAR, JJ.

DATE : AUGUST 12, 2015.

By this Civil Application, the applicant seeks condonation of delay of 18 months and 8 days in filing the First Appeal against the judgment and decree passed by the Trial Court under Section 14[2] of the Indian Arbitration Act, 1940.

Admittedly, the judgment and decree was passed by the trial Court in the proceedings filed by the applicant for passing a decree in terms of the award under Section 14[2] of the Arbitration Act, 1940 on 15.10.2007. Certain claims of the applicant, as granted by the Arbitrator, were decreed by the trial Court, however, the Trial Court granted 9% interest against a higher claim. It is the case of the applicant

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that the applicant was entitled to 14% interest, and therefore, the applicant filed an application before the trial Court on 16.02.2008, under Section 152 of the Civil Procedure Code for correction of the typographical mistake. According to the applicant, there was a typographical mistake in the judgment, in as much as instead of 14% interest, 9% interest was wrongly mentioned in the judgment and decree. The said application was rejected by the trial Court on 01.04.2009. The applicant applied for the certified copy of the order on 04.09.2009. It is the case of the applicant, that the certified copy was misplaced and again an application was made by the applicant on 07.10.2009, for grant of certified copy. It is stated in the application, that the applicant realized that the record and proceedings before the trial Court had reached the High Court in view of the filing of the appeal by the respondent against the judgment and decree, and hence, the applicant applied for certified copy in the High Court on 06.11.2009. The certified copy was received by the applicant on 02.12.2009, and the Arbitration Appeal was filed by the applicant on 11.12.2009. Along with the Arbitration Appeal, an application was filed by the applicant for condonation of delay in filing the appeal. It is stated in that application, that since some particulars were missing in the application for condonation of delay, the applicant was permitted to withdraw the application with liberty to file a fresh application. A fresh application for condonation of delay was filed by the applicant on 10.09.2013. It is the case of the

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applicant, that the record of the Court was not traceable, and the appeal filed by the applicant was wrongly shown to have been rejected by the office. It is stated that when the appeal of the respondent was listed for filing of private paper book on 10.04.2013, the applicant realized about the rejection of the main appeal, and immediately an application for condonation of delay was filed on 10.09.2013. The learned Senior Counsel appearing on behalf of the applicant has relied on the judgment reported at 1984 [2] Bom.CR 685 (M.Das Gupta .vrs. Prakash K. Shah), to substantiate his submission that if a delayed appeal is not accompanied by an application for condonation of delay, the same would not result in the dismissal of the appeal, and a party should be granted an opportunity to file an application for condonation of delay. It is stated that the applicant was bonafide prosecuting the matter before the trial Court in an application under Section 152 of the Civil Procedure Code, and the time spent by the applicant in bonafide prosecuting the matter before the trial court should be excluded. It is submitted that in the circumstances of the case, and in the interest of justice, the delay should be condoned.

Shri Sundram, the learned Counsel for the respondent has opposed the prayer made in the application and submitted that the applicant has been absolutely negligent in prosecuting the matter. It is submitted that the facts narrated in the earlier part of this order would clearly demonstrate that the applicant was not diligent, and therefore, this Court may not

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exercise the discretion for allowing the application for condonation of delay. It is submitted that there is negligence on the part of the applicant at every stage and the delay cannot be condoned even by taking a lenient view in the matter.

On hearing the learned counsel for the parties, and on a perusal of the application and reply filed thereto, it appears that the applicant has not made out sufficient cause for condoning the inordinate delay of more than 18 months and 8 days in filing the appeal. It is necessary to note that the judgment and decree was passed by the trial Court on 15.10.2007. It cannot be said, as canvassed on behalf of the applicant, that the applicant was bonafide prosecuting the matter in the civil court by filing an application under Section 152 of the Code of Civil Procedure. The action on the part of the applicant in filing the application under Section 152 of the Civil Procedure Code, cannot be said to be bonafide, especially when the applicant had tried to impress upon the court by the said application that instead of interest of 14%, in view of the typographical mistake, interest of 9% was awarded. The said application was decided on 01.04.2009. It is surprising, that the applicant lost the certified copy of the order that was received by the applicant, and then claimed that the applicant was required to apply afresh for certified copy. The applicant filed the applications for certified copy in the trial court and the High Court on 07.10.2009 and 06.11.2009. The appeal was filed on 11.12.2009, along with an application for condonation

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of delay in filing the appeal, but, it appears that the application for condonation of delay was filed in a casual manner and admittedly lacked in particulars. Though this Court permitted the applicant to withdraw the said application with liberty to file a fresh application for condonation of delay, according to the applicant, the applicant could not file the application for condonation of delay till 10.09.2013. There is a large time gap between 16.04.2010, i.e. the date on which the application for condonation of delay was disposed of and 10.09.2013, i.e. the date on which the second application for condonation of delay was filed. The reasons stated by the applicant for this delay do not appeal to this court. We find that the applicant was totally lethargic and casual in taking recourse to the legal remedies and prosecuting the matter, at every stage. There is a delay on the part of the applicant at each and every stage of the proceedings. This is not a fit case for condonation of the huge delay. The judgment reported in the case of *M.Das Gupta .vrs. Prakash K. Shah (supra)*, and relied on by the counsel for the applicant, cannot be made applicable to the case in hand. In the present case this court is not considering the dismissal of appeal on the ground, that an application for condonation of delay is not accompanied with the appeal. In the instant case, the application for condonation of delay was disposed of on 16.04.2010, because of the defects in the same, and a liberty was granted to the applicant to cure the defects and file a fresh application. The fresh application was filed after an inordinate delay of more

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than four years on 10.09.2013. Even by taking a pragmatic view in the matter, it would not be possible for this Court to condone the delay. A straight jacket formula cannot be applied for condoning the delay and each case has to be decided on its own facts. In the circumstances, we are not inclined to condone the inordinate delay in filing the appeal.

In the result, the Civil Application is rejected. No costs.

JUDGE

JUDGE

Rgd.