

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

**Date of decision: 28<sup>th</sup> November, 2016**

**+ FAO 550/2016**

**KAY KAY TEXO FAB PVT LTD**

**..... Appellant**

**Through**

**Mr Duli Chand and Mr R.C. Madan,  
Advs.**

**versus**

**M/S NAVKAR FURNISHING & ORS**

**..... Respondent**

**Through**

**None**

**%**

**CORAM:**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

**: SUNITA GUPTA, J. (ORAL)**

**CM 44014/2016 (delay)**

1. This is an application under Order XLI of Code of Civil Procedure read with Section 5 of the Limitation Act seeking condonation of 536 days in filing the present appeal filed against the order passed by learned Additional District Judge (West) on 26.03.2015. By the impugned order, the suit for recovery of Rs.4,53,888/- filed by the appellant herein / plaintiff was ordered to be returned under Order VII Rule 10 of the CPC on the ground that the court lacked the territorial jurisdiction to try and entertain the suit.

2. Feeling aggrieved, the present appeal has been preferred by the appellant. The appeal is accompanied by application seeking condonation of delay in filing the appeal.

3. For the sake of ready reference, the reasons for delay in filing the appeal, as narrated in the application, are reproduced as under:

“3. That the present counsel was engaged by the appellant on 15.04.2015 in regard to file the present appeal.

4. That the counsel is aged above 82 years old and suffering from various old age ailments as well as suffering from high sugar. After receiving the brief of the present case the counsel suffered a lot and inadvertently the documents pertaining to the present appeal tagged with some other documents / file and due to old age and loss of memory the present counsel could not able to recollect the memory to file the present appeal and further during that period the counsel was taking bed rest at home. It is further worthwhile to mention here that the counsel also changed his residence as well as contact number.
5. That on the occasion of Diwali while whitewashing and dusting the office files / documents, the present counsel found a bundle of tagged with present documents of the appeal and thereafter the counsel contacted the appellant and felt sorry about the delay of the file the present appeal due to loss of memory and the appellant having faith of words of the counsel and further requiring to file the present appeal without any further delay.”
4. It is pleaded that the appellant would suffer irreparable loss and injury in case the delay is not condoned.
5. Having heard Mr. Duli Chand, learned counsel for the appellant, the court is of the view that the appellant has failed to make out a case for condonation of delay in filing the appeal.
6. The basic submission of learned counsel for the appellant is that he is aged about 82 years old and suffering from various old age ailments and was taking bed rest at home. He had also shifted his residence as well as contact number. During the occasion of Diwali, he found the documents for preferring appeal and thereafter contacted the appellant and filed the appeal. It is submitted that one

opportunity be granted to the appellant to contest the appeal on merits and the delay in filing the appeal be condoned.

7. Section 5 of the Limitation Act provides for extension of prescribed period of limitation in certain cases and confers jurisdiction upon the Court to admit any application or any appeal after the prescribed period if it is satisfied that the appellant or applicant had sufficient cause for not preferring such appeal or application within the prescribed period. It is settled law that for the purpose of condonation of delay, there must be some cause which can be termed 'sufficient cause'. The question for consideration is whether the averments disclosed any sufficient cause to condone the inordinate delay of 536 days in filing the appeal.

8. In *Ajit Singh Thakur Singh and anr. vs. State of Gujarat* [ (1981) 1 SCC 495 ] Supreme Court observed :

"It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause."

(Emphasis supplied)

9. Again in *Union of India (UOI) and Ors. v C.L. Jain Woolen Mills Pvt. Ltd.* 131 (2006) DLT 360, it has been held as under:

8. ...At this stage, it will be useful to refer to the view taken by a Division Bench of this Court in the case of *Delhi Wakf Board v. Sh. Balbir Singh* (RFA No. 80/82 decided on 20th March, 2006) where the court after discussing the various judgments, held as under-

"We may also notice that even the present appeal is barred by time and application being CM No. 165/82 was filed for condensation of delay and the reason given is that the appellant came to know of

*the order of the Court only on 17.2.82 where after he filed this appeal in March, 1982. Though the provisions of Section 5 have received a liberal construction in recent past, still the Court cannot ignore that the fact where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner and without disclosure of good and a sufficient cause for condensation of delay.*

*The application filed for condensation of delay in the present case hardly gives any reason or cause much less a reasonable explanation for condoning the delay. Merely because there was no communication between the client and counsel could hardly be a reason for condoning the delay of 2 years as the order was pronounced on 5th November, 1980 in the presence of the counsel and the appeal was filed in the year 1982.*

*At this stage, we may refer to the judgment of the Supreme Court in the case of **Ramlal and Ors. v. Rewa Coalfields Ltd** [1962] 2 SCR 762 wherein the Court held as under:*

*“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 and this legal right which has accrued to the decree holder by lapse of time should not be lightly 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. 2nd 13 Mad 269, Approved.*

*It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condensation 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. 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;....*

*Reference can also be made to a judgment of the Division Bench of the Punjab and Haryana High Court in the case of **Sanjeev Babbar and Ors. v. Dev Papers Pvt. Ltd.** Vol.Cxviii-(1998-1) The Punjab Law Reporter 814 wherein the court held as under:*

*5. As is clear from the above facts that the present petitioner has been most negligent and irresponsible in pursuing his remedy. The revision petition as originally filed was barred by time as is clear from the afore-stated dates. In fact no revision was filed. It was only some papers with the impugned order which were filed without any grounds of revision as required under law. Even the requisite Court-fees was not levied. When a petition becomes barred by time, a right accrues to the other party and such a right cannot be taken away by the Court merely on an application which lacks bonafides and does not disclose any sufficient cause for condensation of delay. In the present case, the revision itself may be barred not only by 67 days, but even more, because after its return on 3.7.1996 it was refiled on 3.4.1997 with grounds of revision. The delay in filing as well as in re-filing has not been explained in any of the applications. It is unfortunate, but is true, that present case discloses the extent to which a petitioner can be irresponsible and negligent of his own rights. The provisions of Limitation Act cannot be so liberally construed so as to frustrate the very purpose of the provisions of the Limitation Act. In this regard reference can be made to a judgment of the Hon'ble Supreme Court of India in the case of **P.K. Ramachandran v. State of Kerala and Anr.** JT. 1997 (8) S.C. 189, where the Hon'ble Court held as under:*

*Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condensation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.*

*In the application for condensation of delay hardly any reason has been stated. All that has been stated is that no authorised person had appeared on behalf of the appellant when the decree was passed on 5th November, 1980. Thereafter, application was filed under Order 9 Rule 9 CPC and later on another application was filed under Order 47 Rule 1 CPC. Both these applications were dismissed by the trial Court on 16th February, 1980 as not maintainable and the appellant came to know about the said orders on 17th February, 1982. thereafter, an appeal was filed in this Court on 3rd March, 1982. Except giving these dates, the application gives no explanation, much less a sufficient cause for justifying the prayer for condensation of delay. The vague averments in the application cannot be the basis for denying a substantial benefit in law to the respondent. The right of the other party cannot be taken away on such averments, which would constitute no sufficient cause on the true and correct interpretation of the sufficient cause contemplated under the provisions of the Limitation Act."*

10. Again in ***Basawaraj and Ors. v The Spl. Land Acquisition Officer***, (2013) 14 SCC 81 it has been held as under:

*"9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be*

necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: **Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors.**, AIR 1964 SC 1336; **Lala Matadin v. A. Narayanan**, AIR 1970 SC 1953; **Parimal v. Veena @ Bharti** AIR 2011 SC 1150; and **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai** AIR 2012 SC 1629.)

10. In **Arjun Singh v. Mohindra Kumar**, AIR 1964 SC 993 this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: **Madanlal v. Shyamlal**, AIR 2002

SC 100; and **Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors.**, AIR 2002 SC 1201.)

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. 24, p. 181:

"330. Policy of 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.

(See: **Popat and Kotecha Property v. State Bank of India Staff Assn.** (2005) 7 SCC 510; **Rajendar Singh & Ors. v.**

***Santa Singh & Ors.*, AIR 1973 SC 2537; and *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project*, (2008) 17 SCC 448).**

14. In ***P. Ramachandra Rao v. State of Karnataka***, AIR 2002 SC 1856, 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 ***A. R. Antulay v. R.S. Nayak***, AIR 1992 SC 1701.

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 bonafide 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.”

11. Tested on the touchstone of the afore-noted broad principles to be kept in view while dealing with such applications, the Court is of the view that the appellant has miserably failed to show cause, much less sufficient cause for condonation of delay in filing the appeal. The entire delay is attributed to the old age of the counsel for the appellant, his ailments and that due to loss of memory he was not able to recollect to file the appeal and on the occasion of Diwali while whitewashing and dusting he found the documents and then contacted the appellant and filed the appeal. In the entire application, there is no whisper as to what efforts were made by the appellant to contact the counsel to file the appeal so much so even the application is not accompanied by any affidavit of the appellant

or the authorized representative. It is a plain and simple case of inaction and negligence for which no indulgence can be given to the appellant/applicant. In my view, the aforesaid extracted paragraphs hardly spell out any reason / cause for condonation of the delay in filing the appeal. The Court does not come to the aid of a person who sleeps over his rights.

12. In this view of the matter, it is not a fit case for condonation of delay in filing the appeal.

The application is accordingly dismissed.

**FAO 550/2016 & CM 44015/2016 (exemption)**

1. In view of the fact that the application seeking condonation of delay in filing the appeal has been dismissed, the appeal is also dismissed as barred by limitation.

2. The application seeking exemption from filing certified copy of the impugned order is also rendered infructuous and is hereby dismissed as such.

**SUNITA GUPTA, J**

**NOVEMBER 28, 2016/rd**