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

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Date of Decision: 18th January, 2017

+ **FAO 69/2016**

PRADEEP GUPTA

..... Appellant

Through: **Mr.S.B. Pandey and
Mr.Santosh Kumar, Advocates**

versus

PURN CHAND MALHOTRA

..... Respondent

Through: **Ms. Priyanka Awasthi,
Advocate**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant instituted a suit for recovery of Rs.3,94,754/- against the respondent under Order XXXVII of the Code of Civil Procedure before the District Judge, Central District, Tis Hazari Courts in which the summons were issued to the respondent on 5th November, 2011.

2. On 2nd September, 2013, the appellant failed to appear before the Trial Court whereupon the Trial Court dismissed the appellant's suit in default.

3. On 6th September, 2014, the appellant filed an application for restoration of the suit on the ground that there was a lapse on the part of the appellant's counsel. It was submitted that the appellant enquired from his previous counsel on 1st September, 2014 and thereafter, enquired from the Court and came to know of the dismissal

of the suit. The appellant thereafter engaged a new counsel, who inspected the record on 4th September, 2014 and thereafter filed the application for restoration.

4. Vide order dated 6th October, 2015, learned Trial Court dismissed the restoration application holding that there was no sufficient cause for condonation of delay in seeking the restoration.

5. The law with respect to condonation of delay is well settled. While dealing with applications seeking condonation of delay under Section 5 of Limitation Act, the approach has to be liberal and judicious guided by the paramount consideration of not depriving a litigant ordinarily of adjudication of rights on merits. Hypertechnical, too strict, and pedantic approach may cause injustice that has to be avoided.

6. In *Sangram Singh v. Election Tribunal, Kotah*, [1955] 2 SCR 1, the Supreme Court held that the Code of procedure is designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

7. In *Jai Jai Ram Manoharlal v. National Building Material Supply, Gurgaon*, [1970] 1 SCR 22, the Supreme Court held that the rules of procedure are intended to be a handmaid to the administration of justice and party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.

8. In *Union of India v. Ram Charan (Deceased)* [1964] 3 SCR 467,

the Supreme Court observed that the provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of proving his claim on account of his culpable negligence or lack of vigilance.

9. In *Bhag Singh v. Major Daljit Singh*, 1987 SCC (Supp) (1) 685, reiterating the law laid down earlier by the Supreme Court in *Union of India v. Ram Charan*, (supra) the Supreme Court held that the Court while considering an application under Section 5 of the Limitation Act will consider the facts and circumstances not for taking too strict and pedantic stand which will cause injustice but to consider it from the point of taking a view which will advance the cause of justice.

10. In *G. Ramegowda v. Special Land Acquisition Officer, Bangalore*, AIR 1988 SC 897, the Supreme Court observed that the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

11. In *Collector, Land Acquisition, Anantnag v. Katiji*, AIR 1987 SC 1353, the Supreme Court interpreted the expression 'sufficient

cause' and summed up the principles as under:-

"1. To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said context is another."

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"3. The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of the CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay?*

The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

12. In *Ram Nath Sao v. Gobardhan Sao*, [2002] 2 SCR 77, the Supreme Court observed as under:-

“11. Thus it becomes plain that the expression “sufficient cause” within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute “sufficient cause” or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On

the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”

13. In *N. Balakrishnan v. M. Krishnamurthy*, 2008 (228) ELT 162 (SC), the Supreme Court held as under:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior

court to come to its own finding even untrammelled by the conclusion of the lower court.”

“10.The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice.... Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly....”

“12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.....”.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation.....”

14. In *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs.*, 2008 (8) SCC 321, the Supreme Court summarized the principles as follows :

(i) The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner,

depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an

appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.”

15. Applying the aforesaid principles to this case, this Court is satisfied that there is no gross negligence or lack of bonafides on the part of the appellant, and the appellant’s claim for recovery of Rs.3,94,754/- against the respondent warrants adjudication.

16. The appeal is allowed and the impugned order dated 6th October, 2015 is set aside. The appellant’s suit is restored to its original number.

17. The parties shall appear before the learned Trial Court on 15th February, 2017 at 2.30 PM.

18. The Trial Court record be sent back forthwith.

19. The appellant has deposited Rs.50,000/- with the Registrar General of this Court in terms of order dated 11th February, 2016. The said amount along with interest accrued thereon be refunded back to the appellant.

20. *Dasti* to the counsels for the parties.

JANUARY 18, 2017
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J.R. MIDHA, J.