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

% *Date of Judgment: 20.12.2017*

+ **R.F.A. 861/2016**

MITENDER PAL SINGH SOLANKI APPELLANT
Through: Mr. Harish Pandey, Advocate

versus

SURENDER SINGH AND ANR RESPONDENT
Through: Mr. Piyush Pahunja, Advocate

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

C.M.No.40792/2016 (for condonation of delay in filing the appeal)

1. This is an application under Section 5 of the Limitation Act for condonation of 451 days' delay in filing the present appeal against the impugned judgement and decree dated 30th July 2015 passed by the court of Sh. Rakesh Kumar Sharma, Ld. ADJ – 03, (North West) Rohini Courts, Delhi in Civil Suit No. 449/2014.
2. It is stated that after the impugned judgement dated 30.07.2015 the Appellant/Applicant instructed his counsel in the Trial Court to obtain certified copies of the judgment and decree and to file an appeal. It is pleaded that the appellant was under bonafide belief that the appeal might have been filed against the

impugned judgment. It is further pleaded that the appellant received summon for execution of the impugned judgement and decree and on enquiry his counsel did not respond satisfactorily and the appellant changed the counsel to file the appeal.

3. It is submitted by the learned counsel for the Appellant that the previous counsel of the appellant was negligent in not filing the appeal and for the negligence of the lawyer the appellant should not be made to suffer. He submits the delay in filing the appeal may be condoned.
4. This application has been vehemently opposed by the learned counsel for the Respondents contending that no sufficient cause has been made out for condonation of delay of such a long period, and there is no justification of unnecessarily harassing his clients after the lapse of 451 days. He relied upon 3 judgement of this court in **Rajeshwari v. Shiv Chaudhary & Ors. (2014 SCC OnLine Del 98)**, **Kashudhan Kutir Udyog v. Hindustan Unilever Ltd. (2015 SCC OnLine Del 13036)**, **Enforcement Directorate v. Americal Express Bank & Ors., (CRL. A. 1263/2011) (219 (2015) DLT 12 (CN))**.
5. After hearing the learned Counsel for the parties and after going through the material on records, I am of the view that in this case there was gross inaction, negligence and lethargies on the part of the Appellant in preferring the present appeal. It appears from the reasons assigned by the Appellant that there was no bonafide in his approach of preferring the present appeal.

Appellant has not given information and details of his previous counsel on the record. He has failed to produce any document on record to show that the Appellant had taken action against his previous counsel or has filed any complaint before the Bar Council of India for the alleged inactions on his part. He has failed to explain on which date he gave instructions to his counsel to obtain the certified copies of the documents and file an appeal against the impugned judgment and decree. He has not explained if his counsel had informed him that he would be filing an appeal against the impugned judgement without the signatures of the applicant/appellant. The applicant/appellant left the date and month blank in his application at Para 4 as to when he received the summons from Executing Court and when did he contact his counsel after receiving the summons from Execution Court. He has not explained if the appellant has filed the certified copies of impugned judgment and decree after obtaining from previous counsel or obtained fresh certified copies from new counsel to file the present appeal. He has not given the date of engagement of new counsel. He has also not filed any affidavit of his previous counsel in support of his contentions.

6. This Court in **Moddus Media Pvt. Ltd. v. Scone Exhibition Pvt. Ltd. (2017 SCC OnLine Del 8491)** held as under:

“13.The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant

about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delays condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant, which cannot be accepted and ought not to have been accepted. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences.”

7. The Hon’ble Supreme Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors. 2013 12 SCC 649** while deprecating negligence on the part of litigants in not diligently pursuing culled out the following principles governing condonation of delay:-

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

21.1 (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.

21.2 (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.

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

21.4 (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.

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

21.6 (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.

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

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to 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.

21.9 (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.

21.10 (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.

21.11 (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.

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

21.13 (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:

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2 (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.

22.3 (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.

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

31. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice.”

8. In a case before Division Bench of this court in **Man Singh (deceased) through L.Rs. Vs. Gaon Sabha Jindpur and others, 2012 (4) ILR (Del) 50**, it was contended that the appellants were under the bonafide impression that the matter is being properly looked after by the counsel. It was held that the litigant has to be vigilant and he should contact and take part in the proceedings with due diligence and if negligence on the part of the litigant is established in a particular case, then the courts are not to come to the rescue of such applicants. This court had relied upon a decision of the Apex Court, the relevant portion of the same reads as under: -

“7. The Apex Court in *Hameed Joharan Vs. Abdul Salam*, (2001) 7 SCC 573 2001 Indlaw SC 21137 made the following observations: -

“.....It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law

prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity – the Latin maxim *maxim vigilantibus et non dormientibus jura subveniunt* (the law assists those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of rights.....””

9. In the present case, the appellant all along was aware of the impugned judgment and decree and in spite of such knowledge, did not take any action to file the appeal consciously within the limitation and himself acted negligently.
10. The appellant does not appear to be bonafide in his approach. There is an inordinate delay of 451 days which require stricter approach. When there was a decree against the appellant, he is expected to be more vigilant in finding out from his previous counsel whether he had obtained the certified copies and had filed the appeal. The approach of the Appellant is casual, vague and fanciful. The present application is drafted in a haphazard manner and even relevant date and month in Para 4 are left which reads as under:

“4. The Appellant received summons for execution of impugned judgement in the month of ____ and enquired from his counsel but no satisfactory response was received from his counsel”

11. In the facts and circumstances, the appellant has failed to make out any justification for condonation of delay. As such the present application for condoning the delay is dismissed.
12. In view of the dismissal of the application for condonation of delay, the appeal, RFA No.861/2016 and CM No.40792/2016 under order 41 rule 5 read with section 151 CPC, 1908 for stay of the impugned judgment and decree, are also dismissed.

DECEMBER 20, 2017

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(VINOD GOEL)
JUDGE