

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

+ **RFA Nos.798/2017 & 799/2017**

% **18th September, 2017**

1. **RFA No.798/2017**

VODAFONE MOBILE SERVICES LIMITED Appellant

Through: Mr. Tarun Sharma, Advocate
with Ms. Aakansha Kapoor,
Advocate.

versus

BHOOPENDER SINGH Respondent

2. **RFA No. 799/2017**

VODAFONE MOBILE SERVICES LIMITED Appellant

Through: Mr. Tarun Sharma, Advocate
with Ms. Aakansha Kapoor,
Advocate.

versus

BHOOPENDRA SINGH Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

**C.M. No.34247/2017 (for condonation of delay of 527 days) in
RFA No.798/2017**

1. By the impugned judgment, the trial court has decreed the
suit for a sum of Rs.3,15,226/- along with interest at 12% per annum

on account of work which the respondent/plaintiff is said to have done for the appellant/defendant with respect to communication lines laid down for Meerut-Shamli OFC route.

2. No doubt, delay is condoned liberally by courts. Also courts are liberal in condoning the delay because rights of parties should not ordinarily be defeated on account of delay. Supreme Court has therefore observed and held in the judgment in the case of *N. Balakrishnan Vs. M. Krishnamurthy AIR 1998 SC 3222* that there is no vested right in filing an appeal with delay and delay must ordinarily be condoned unless the delay is on account of gross/grave negligence.

3. Let us examine the facts of the present case whether delay should be condoned.

4. At the outset, it is to be noted that appellant is not some small citizen having limited financial means or infrastructure but the appellant is a gigantic multinational company being a company which is part of international chain of the telecommunications giant Vodafone. When condonation of delay is applied by such companies they would not have equities similar to a small citizen who lacks

financial means or other common citizens. Also, though every day of delay has not to be explained, and sufficient cause must cover the general period of delay, sufficient cause has to be however sufficient cause i.e something which effectively more or less stopped the filing of the appeal or prevented the filing of the appeal. There is a difference between the reasons constituting sufficient cause and facts as to how the period of delay has been explained. All facts do not constitute sufficient cause.

5. In the present case, the facts pleaded do not constitute sufficient cause will become clear from paras 5 and 6 of the present application and these paras read as under:-

“5. It is most respectfully submitted herein that the Appellant has not been able to present the said Regular First Appeal within the prescribed Period of Limitation of Ninety Days as has been provided in the Article-116(a) of the Limitation Act, 1963. However, the Appellant intends to make out a “Sufficient Cause” for seeking the Relief to condone the delay of 527 days in filing the Regular First Appeal. The Explanation to constitute “Sufficient Cause” is being explained herein under on the basis of the Facts submitted in the Table herein below:

S. No.	PERIOD OF DAYS	SUFFICIENT CAUSE
1.	02.04.2016 UPTO 24.07.2016 113 DAYS	OFFICER IN-CHARGE NAMELY ANUJ KUMAR SINGH HAD JOINED THE UTTAR PRADESH WEST CIRCLE OF THE APPELLANT COMPANY ON 20.10.2015. THEREAFTER, THE SAID OFFICER WAS RELIEVED FROM THE UTTAR PRADESH WEST CIRCLE OF THE APPELLANT COMPANY ON 24.07.2016. NO INFORMATION WAS MADE

		AVAILABLE TO THE DECISION MAKING TOP MANAGEMENT OF THE IMPUGNED JUDGMENT & DECREE PASSED ON 02.04.2016.
2.	25.07.2016 UPTO 05.09.2017 408 DAYS	NEW OFFICER IN-CHARGE NAMELY ANKIT DIXIT HAD JOINED THE UTTAR PRADESH WEST CIRCLE OF THE APPELLANT COMPANY ON 16.08.2016. SUMMONS OF THE EXECUTION PETITION WERE RECEIVED BY THE APPELLANT COMPANY ON 25.08.2017 THEREAFTER, WITHOUT WASTING ANY TIME THE INCUMBENT OFFICER, ANKIT DIXIT, IMMEDIATELY STARTED TRACING THE OLD RECORD OF THE CIVIL SUIT. HOWEVER, NO DOCUMENT COULD BE FOUND IN THE OFFICE PREMISES FOR THE REASON THAT DURING THE SHIFTING OF THE REGISTERED OFFICE BY THE APPELLANT COMPANY FROM DELHI TO BOMBAY ON 10.06.2017 MOST OF THE OLD RECORD FILES GOT UNTRACEABLE. THEREFORE, THE CERTIFIED COPY OF THE COMPLETE CIVIL SUIT PAPER BOOK WAS APPLIED ON 06.09.2017
3.	06.09.2017 UPTO 11.09.2017 6 DAYS	CERTIFIED COPY APPLIED ON 06.09.2017

6. It is pertinent to mention herein that there was never any deliberate intention on the part of the Appellant Company to approach the Appellate Court beyond the statutory Period of Limitation. There was also neither any Negligence nor Laches in filing the Regular First Appeal, which can be made attributable to the Deponent herein. Further, there is also no lapse and inaction on the part of the Appellant Company. Therefore, this Hon'ble Court in the Interest of Justice may kindly be pleased to adopt a liberal construction to the term "Sufficient Cause" to condone the bonafide delay of 527 Days in filing the Regular First Appeal. The Appellant Company would lose a Valuable Right to impugn the Judgment & Decree passed on 02.04.2016 if the present meritorious Appeal is not considered on merit."

6. A reading of the aforesaid paras shows that one delay of 113 days is sought to be explained by stating that the officer in-charge

did not make any information available. Delay of the further period of 408 days is sought to be explained on account of a new officer joining and certain documents being not traceable allegedly being 'old record' i.e the record of the present suit. Certified copy was thereafter applied for on 6.9.2017 and whereafter this appeal came to be filed on 11.9.2017. As already stated above, statement of facts are different than the facts which constitute sufficient cause. In the opinion of this Court the facts which are stated in chart in para 5 of the application show a clear case of gross negligence. Gross negligence cannot be condoned because courts cannot overlook the fact that after expiry of period of limitation vested rights have accrued in favour of the other side, more so in the facts of the present case since the appellant in question will not be entitled to any extraordinary leeway for condonation of delay.

7. In view of the above discussion, I do not find any reason for constituting sufficient cause for condonation of huge delay of 527 days in filing of the first appeal.

Application is accordingly dismissed.

RFA No.798/2017 and C.M. Nos. 34246/2017 (stay) & 34248/2017 (exemption)

8. Since the application for condonation of delay is dismissed, the Regular First Appeal itself is dismissed and also the connected applications.

C.M. No.34250/2017 (for condonation of delay) in RFA No.799/2017

9. The facts of the present case are more or less similar to the facts narrated in RFA No.798/2017 except that the delay in this case is of 510 days.

For the reasons already given while dismissing C.M. No.34247/2017 for condonation of delay in RFA No.798/2017, and which reasoning is adopted for disposal of the present application, this C.M. is also dismissed.

RFA No.799/2017 and C.M. Nos. 34249/2017 (stay) & 34251/2017 (exemption)

10. Since the C.M. No.34250/2017 for condonation of delay is dismissed, the Regular First Appeal and C.M. No. 34249/2017 and are dismissed.

SEPTEMBER 18, 2017/ Ne

VALMIKI J. MEHTA, J