

DIWAKER GULATI
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.5257 of 2018(O&M)

Date of decision: 17.9.2018

M/s Parikarma Infrastructure Pvt. Ltd.Appellant

VERSUS

M/s Avencer Properties Pvt. Ltd. and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Talwar, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 28.10.2015 passed by the Additional District Judge, Rewari whereby appeal preferred by the respondent/plaintiff against the judgment and decree dated 23.01.2012 passed by the trial Court was allowed, judgment and decree of the trial Court were modified and the respondent/plaintiff has been allowed principal relief of specific performance of agreement of sale in place of alternative relief of recovery of earnest money etc. Along with the appeal, an application has been filed under Section 5 of the Limitation Act, 1963 for condoning delay of 932 days in filing the appeal.

Counsel for the applicant/appellant would urge that delay in filing the appeal should not be allowed to stand in the way of substantial justice. Neither delay in filing the appeal is intentional much less mala fide nor it has resulted in creating third party interests in the *lis*, due to failure of the applicant to file the appeal within the prescribed period of limitation. It has further been argued that Hon'ble the Supreme Court in **Esha**

Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649, has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay as the courts are not supposed to legalize injustice but are obliged to remove injustice.

Before advertng to the submissions made by counsel for the applicant, it is pertinent to refer to the averments raised in paras 3 and 6 of the application, extracted hereinbelow for ready reference:-

“3. That the applicant-appellant Company is located at New Delhi and the Company had engaged its counsel in the Courts at Rewari to defend the first appeal in the Court of Additional District Judge, Rewari. Since the ownership and possession of the land in question vested with the applicant in terms of the registered sale deed executed way back on 14.02.2006 and even the trial Court had dismissed the civil suit as filed by the plaintiff, the applicant was assured by the counsel engaged by it that there is no likelihood of any adverse orders being passed. The counsel further assured that he shall inform the applicant-Company about the outcome of the case.

6. That the applicant got the knowledge of the above said judgment and decree when the case was fixed before the Executing Court at Rewari on 13.07.2018 and incidentally, Sh. Amit Kumar Chauhan, Advocate, who is conversant with the applicant Company, was present in the Court and it transpired that the process server had given a report that applicant-Company has refused to accept the summons. The said counsel immediately contacted the concerned Authorities

of the applicant Company and he was authorized to make appearance and find out the factual position. The said counsel thereafter, appeared in the execution proceedings and subsequently, made the requisite enquiries and on coming to know about the factual position, moved an application dated 08.08.2018 for supply of certified copies of the judgment & decree dated 28.10.2005 of ADJ, Rewari. The said certified copies were made available on 09.08.2018 and immediately thereafter, present counsel was engaged and the instant was filed on 16.08.2018. However, in the process, there has been a delay of 932 days in filing the present appeal.”

I have heard counsel for the applicant-appellant, perused the paper-book particularly the averments raised in the application filed under Section 5 of the Limitation Act supported by an affidavit of Tej Pal Chauhan, authorized signatory of the applicant.

There cannot be any quarrel with the settled position in law that the Court is required to adopt a liberal and pragmatic approach while dealing with question of condonation of delay. However, Hon’ble the Apex Court in **Ramlal and others vs. Rewa Coalfields Limited, AIR 1962 SC 361**, has held that even if sufficient cause has been shown, parties are not entitled to condonation of delay as a matter of right. The proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction vested in the court by Section 5 of the Limitation Act. If sufficient cause is not proved, nothing further has to be done; the application for condoning delay has to be dismissed on that ground only. If sufficient cause has been shown then the Court has to enquire whether in its discretion, it should condone the delay. 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 but the scope of enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.

A plain and careful reading of the aforesaid observations makes it evident that before seeking indulgence of the Court in exercise of its discretionary jurisdiction under Section 5 of the Limitation Act, the applicant is obligated to allege and prove sufficient cause for condoning delay.

Reverting to the case at hand, plea of the applicant is that applicant was assured by counsel engaged by it that there is no likelihood of any adverse orders being passed. Counsel further assured that he shall inform the applicant-Company about outcome of the case but the applicant was not informed of the decision by counsel engaged by the applicant.

Indisputably, the appeal was decided by Additional District Judge, Rewari on 28.10.2015 which was filed in the year 2012. If the applicant did not bother to know fate of the appeal for a period of 3 years since its decision, it speaks volumes that the applicant was not vigilant and diligent in pursuing the judicial proceedings. A litigant who is not vigilant and diligent renders himself ineligible to seek indulgence in exercise of discretionary jurisdiction of the Court. The facts brought-forth by the applicant are not at all sufficient to show that there were circumstances much less beyond its control that stood in its way to make requisite inquiries in regard to status/fate of appeal pending in the Court at Rewari. It appears that the applicant has raised a plea in para 3 of the application as if it was seeking setting aside ex parte proceedings in a pending matter or

restoration of a case dismissed for non-prosecution. As a matter of fact, there is no plea raised much less averments put-forth constituting sufficient cause for condoning a huge delay of 932 days in filing the appeal. This apart, if a plea as has been raised in the instant case is accepted for condoning delay of 932 days, there may not be a single case where application for condonation of delay can be rejected. The natural consequence would be that the provisions of a statute providing for limitation may be rendered nugatory.

In view of the above, when the facts and circumstances of the present case and conduct of the applicants are examined in the light of observations made in **Ramlal and others' case** (supra) and the principles laid down in **Esha Bhattacharjee's case** (supra), it is not a fit case wherein the applicant deserves any relief.

In view of what has been discussed hereinabove, the application for condoning delay of 932 days in filing the appeal is dismissed. As a natural corollary, the appeal fails and is accordingly dismissed being barred by limitation. No order as to costs.

SEPTEMBER 17, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No