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

% *Date of Judgment: 31st October, 2018*

+ RFA(OS)6/2018

KAMAL RASTOGI & ORS

..... Appellants

Through Mr. Shoeb Shakeel and Mr.A.A.
Ansari, Advocates

versus

M/S EXCEL CROP CARE LTD. & ANR

..... Respondents

Through Mr. Jay Savla and Ms. Renuma Sahu,
Advocates for respondent no.1.

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

CM.APPL 4518/2018(delay) & RFA(OS)6/2018

1. This is an application filed by the applicant/appellant seeking condonation of 1084 days delay in filing the present appeal. Learned counsel for the appellant strongly urges before this Court that the delay was on account of bona fide reasons and not on account of inaction or negligence on the part of the appellant. The learned counsel further submits that after the passing of the impugned order on 15.01.2015, the appellant had filed a review petition which was dismissed on 15.09.2017. Learned counsel submits that the appellant has a very good and strong case on merits and a good case should not

be thrown out on account of being barred by limitation. Counsel submits that the appellant had engaged the services of a counsel, who had prepared the affidavit and obtained the signatures of the appellant on the written statement. But, for the reasons best known to him, the written statement was filed but the objections were not removed and thus, the written statement was not taken on record. Counsel further submits that the learned Single Judge exceeded his jurisdiction by not allowing the application under Order IX Rule 13 CPC although sufficient grounds were raised for not filing the written statement and the order by which the appellant was proceeded ex parte should have been set aside and recalled. Counsel also submits that the Review Petition was dismissed on the ground of delay of 540 days. Counsel submits that the reasons for delay in filing the review petition was on account of objections raised by the Registry, including the objection of payment of court fee, which the appellant could not procure due to paucity of funds. The counsel has given detailed reasons of the review petition being filed and re-filed and thus, it is contended that the delay of 1084 days should be condoned.

2. Mr. Jay Savla, learned counsel appearing for the respondent no.1 has submitted that the present application is a gross abuse of the process of the Court inasmuch as that the appellant has failed to show sufficient grounds which is a condition precedent for allowing an application seeking condonation of delay. The counsel submits that the reason for dismissal of the review petition was on the ground of delay of 540 days which was not sufficiently explained. Counsel submits that the summons in the suit were served on the defendants, being appellants

no.1 to 4 and the respondent no.2 herein. It is further submitted that the defendants were duly represented before the learned Single Judge by the counsels and this is reflected in the order dated 20.07.2010 passed in CS(OS).610/2010. It is further contended that time was granted to the appellants(defendants in the suit) to file the written statement on 20.07.2010 and the matter was adjourned for 23.11.2010 for completion of pleadings. The appellants no.1 to 4 filed the written statements after delay of 214 days. The objections raised by the Registry were not removed despite several opportunities having been granted, which would show that the appellant was not diligent enough to pursue the matter. Counsel submits that since the defendants did not file the written statement, they were proceeded ex parte on 18.09.2012 and thereafter upon hearing the defendant, the learned Single Judge granted time to the plaintiff to file the affidavit by way of evidence and only thereafter a decree was passed on 15.01.2015. Mr. Savla further contends that the review petition was filed on 11.08.2016 after a delay of 500 days and thereafter the objections were removed. It is also contended that the learned Single Judge in the review petition also granted three opportunities to the appellant to file better affidavit giving reasons for the delay.

3. We have heard the learned counsels for the parties and carefully examined the submissions made in the application seeking condonation of delay. In this case, the plaintiff/respondent no.1 herein filed a suit for recovery of Rs.44,64,139/-. Upon service, time was granted to the defendants to file the written statement. The written statement was not filed. The defendants were proceeded ex parte on

18.09.2012. Time was granted to file evidence by way of affidavit and thereafter the suit was decreed by an order dated 15.01.2015. The appellant herein filed an application seeking review which was also dismissed on account of delay of 540 days. An application under Order IX Rule 13 CPC was filed which was dismissed by an order dated 03.11.2015. The application was filed on the ground that the defendants were mis-led by their earlier counsel and in fact defendant no.2 had signed the written statement which was not filed. The learned Single Judge dismissed the application and, in our view, rightly took the view that the defendant no.1/appellant herein was not an illiterate villager but was a company which would be well-advised, by counsel, if not their own legal departments.

4. In the case of *Kirpal Singh v. M/s Haryana Roadways*, LPA.511/2018 decided on 05.09.2018, this Court held as under:

“6. The law is well settled with regard to the condonation of delay in filing the appeal and has also been reiterated in the judgment of the Supreme Court in the case of “Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and Ors.” reported in (2014) 2 SCC (LS) 595. Paragraph 15 is produced herein below wherein it has been observed as under:-

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

- 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.
- 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.

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

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.

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

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.

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

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.

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.

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. 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.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception. xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

7. In the present case the appellant has simply blamed the counsel for not filing the appeal. The application does not disclose the steps taken by the applicant to safeguard his interest. The Supreme Court in the case of Salil Dutta v. T.M. and M.C. Private Ltd. reported as JT 1993 (4) SC 528, wherein, while distinguishing the decision in Rafiq and Anr. V. Munshilal and Anr. reported as AIR 1981 SC 1400, it was observed as below:

“The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, i.e., the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant, but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.”

8. In the case of Brijesh Kumar & Ors. V. State of Haryana & Ors., reported at AIR 2014 SC 1612, the Apex Court has held as under:-

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.”

5. Applying the law to the facts of the present case, we find that the application seeking condonation of delay is not *bonafide* nor the application disclosed sufficient grounds which would convince this Court that the application was presented by sufficient grounds in filing the present appeal. We are also of the view that the appellant was neither diligently or carefully pursuing the matter. We find that the delay is on account of carelessness and inaction on the part of the appellant. We find no ground to condone the delay. The application is dismissed. Since the application seeking condonation of delay has been dismissed, resultantly the appeal also stands dismissed.

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6. The application also stands dismissed in view of the orders passed in the present appeal.

G.S.SISTANI, J.

JYOTI SINGH, J

OCTOBER 31, 2018

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