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

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

+ **RFA(OS) 22/2018 CM No.16489/2018 (Stay)**

PANKAJ DAYAL

..... Appellant

Through: Mr.Sudhir Nandrajog, Senior
Advocate with Ms.Preet Singh,
Advocate.

versus

SUSHIL JAIN

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM.APPL 16490/2018 (delay of 664 days) & RFA(OS) 22/2018

1. This is an application under Order XLI Rule-3A of the Code of Civil Procedure, 1908 read with Section 5 of the Limitation Act, 1963 and Section 151 of the Code of Civil Procedure seeking condonation of delay of 664 days in filing the present appeal.
2. Mr. Sudhir Nandrajog, learned senior counsel appearing for the applicant/appellant submits that delay has been on account of reasons beyond the control of the applicant/appellant. The applicant/appellant had engaged services of a counsel, paid his fees and he was under the impression that he would look after the best interests of the appellant herein. It is contended that the appellant had even signed the written

statement and, thus, the appellant was under the impression that the same would be filed and the counsel would appear on the date fixed. Learned senior counsel further submits that the appellant believed that the plaint would be rejected in view of the provisions of The Punjab Prohibition of Private Money Lending Act 2007, as the suit is based on the averments made that the respondent had provided a friendly loan to the appellant herein. It is further submitted that an application under Order VII Rule 11 CPC was filed which was not decided by the learned Single Judge.

3. Learned senior counsel for the applicant/appellant submits that it is only when a police officer from the Court approached the appellant for execution of bailable warrants he learnt that the execution proceedings have been initiated. Thereafter, the appellant contacted his counsel and counsel informed him that the suit had been decreed and the execution proceedings might have been instituted. It is submitted that thereafter the appellant contacted another counsel who informed him that no written statement was filed. Resultantly, the appellant filed a complaint with the Bar Council of Delhi. For these reasons, there was delay in filing the present appeal. Learned senior counsel submits that the appellant should not be made suffer on account of inaction and negligence on behalf of his earlier counsel.
4. We have heard learned senior counsel for the applicant/appellant and examined the application seeking condonation of delay.
5. We find that the application is devoid of material particulars. The application does not disclose as to when the police officer served the bailable warrants upon the appellant. It has also not been disclosed as

to when the appellant contacted his advocate and when he was informed as to when the suit had been decreed. The application also does not disclose when another counsel was appointed, although the application does disclose that he learnt about non-filing of the written statement on 12.03.2018.

6. The appeal in this case has been filed on 22.03.2018 alongwith an application seeking condonation of 664 days delay in filing the appeal. While deciding an application under Section 5 of the Limitation Act, the Court must record its satisfaction that delay had occurred on account of sufficient cause, bonafide reasons and not on account of negligence or inaction on part of the applicant. In the case of ***P.K. Ramachandran versus State of Kerala*** reported at (1997) 7 SCC 556, the Hon'ble Supreme Court has held that an essential prerequisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.
7. The aspect of delay has been dealt by a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in the case of ***Kirpal Singh v. M/s Haryana Roadways***, reported at 2018 SCC OnLine Del 11428, while rejecting the application seeking condonation of delay on account of carelessness and inaction on the part of the applicant. The relevant paras 6, 7 and 8 read 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.”

8. Applying the law to the facts of the present case, we find that the application seeking condonation of 664 days delay is not *bonafide*. The applicant/appellant is an educated person and residing in Delhi and cannot be compared to a villager. It cannot be said that he was in any way prevented from contacting his lawyer to pursue his matter diligently. Thus, the applicant/appellant has not diligently and carefully pursued the matter. We find the delay is on account of carelessness and inaction on the part of the applicant/appellant. We find no ground to condone the delay of 664 days. The application lacks material particulars and is dismissed.

9. Since the application seeking condonation of delay has been dismissed. Resultantly, the appeal alongwith pending applications also stands dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J.

OCTOBER 31, 2018//ssc

