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

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

+ MAT.APP.(F.C.) 179/2018

ANOOP KUMAR Appellant

Through Ms. Sarika Jetley Kocher, Advocate

versus

SNEHA UPPAL Respondent

Through Ms. Barnali Basak, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPL30338/2018 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM.APPL30337/2018(delay)

3. This is an application filed by the appellant seeking condonation of 180 days delay in filing the present appeal. Counsel for the appellant submits that the delay in filing the appeal was for cogent, *bona fide* reasons and not on account of any inaction or carelessness.
4. We have heard the counsel for the appellant and examined the application seeking condonation of delay. Since the application comprises of only a few paragraphs, we deem it appropriate to reproduce the same:

- “1. That the appellant has preferred an appeal against the impugned order dated 07.12.2017.
2. That the appellant was not able to pay the arrears to the Respondent due to financial crisis.
3. That the appellant has been able to clear the arrears of maintenance by paying 3 post-dated cheques to the Respondent on the last date of hearing i.e. 01/05/2018, and the payments received by the respondent find a mention in the order dated 19.02.2018 and therefore, the present appeal is being filed after the delay of more than 180 days.
4. That the delay in filing this appeal is neither intentional nor deliberate and is being filed with a delay due to the above said reason.

PRAYER

It is therefore prayed to this Hon’ble Court to kindly allow the said application and delay of more than 150 days in filing the application be condoned.

Pass any other order as this Hon’ble Court deems fit and proper in the interest of justice.”

5. Reading of the application would show that the same is highly casual in nature, is devoid of any material particulars, is vague and does not disclose any cause much less sufficient cause for the delay in filing the present appeal. The Supreme Court of India has repeatedly held that the expression “sufficient cause” in Section 5 of the Limitation Act should be given a liberal interpretation to advance substantial justice. It has also been repeatedly held that length of delay is not to be

considered provided the explanation is genuine and the delay was caused for sufficient reasons.

6. In the case of **Ramey v. M.C.D.**, reported at 134 (2006) DLT 106 (DB), the Court while dismissing an application for condonation of delay has held as under:

“4. Learned counsel for the appellant has drawn our attention to two judgments of the Supreme Court, namely, Collector, **Land Acquisition, Anantnag and another Vs. Mst. Kastiji and others** reported as AIR 1987 SC 1353 and **Balakrishnan Vs. M. Krishnamoorthy** reported as 1998 (7) SCC 123 wherein it has been held that the court should adopt a liberal approach while disposing of applications for condonation of delay and that the word “sufficient cause” Under Section 5 of the Act should receive a liberal construction so as to advance the cause of substantial justice.

5. We have perused the aforementioned judgments. There is no doubt that it is settled law that as against a technical and pedantic approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits.

6. At the same time, we would also like to refer to a judgment of 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.

7. In the light of the above and in the facts and circumstances of the present case, we are not persuaded to exercise our power of condonation of delay in favour of the appellant. We are not inclined to condone the delay of 1203 days in filing the present appeal as the appellant has failed to furnish any satisfactory Explanation in his application warranting condensation of delay. On the contrary, his application does not inspire any confidence. Admittedly, no complaint has been filed against the Advocate who was allegedly not diligent in pursuing the litigation on behalf of the appellant. Putting the entire blame upon the Advocate and trying to portray as if the appellant was illiterate and poor and hence totally unaware of the nature and significance of the pending proceedings, is quite unacceptable, particularly in view of the fact that the appellant has entered into a contract worth Rs. 20 lacs with the MCD and is, therefore, not only business savvy and worldly wise, but quite capable of taking care of his commercial interests. He is not a rustic ignorant villager hailing from the backwaters who has no knowledge of the legal proceedings and the court procedures.”

7. 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.

*13. In **State of Karnataka & Ors. v. S.M. Kotrayya & Ors.**, (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.*

*14. Same view has been reiterated by this Court in **Jagdish Lal & Ors. v. State of Haryana & Ors.**, AIR 1997 SC 2366, observing as under:—*

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

8. Applying the settled law to the facts of the present case, we find that the appellant has failed to either plead or establish sufficient cause for the condonation of delay. The only ground raised for condonation of delay is that the appellant was not able to pay the arrears to the

respondent due to financial crisis. This, in our view, is not reason good enough to condone the delay. Accordingly, we find no grounds to entertain the application.

9. The application is dismissed.

MAT.APP.(F.C.) 179/2018

10. Since the application seeking condonation of delay has been dismissed, the appeal is also dismissed. However, we may note the order dated 07.12.2017 passed by the Principal Judge, Family Courts. We find no infirmity in the impugned order passed by the Family Courts.

11. Resultantly, the appeal is dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JULY 31, 2018

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