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

% *Date of Judgment: 5th September, 2018*

+ LPA 511/2018 & CM No.36092/2018 (delay)

KIRPAL SINGH

..... Appellant

Through: Mr.M.K. Bhardwaj and Mr.M.D. Jangra,
Advs.

versus

M/S HARYANA ROADWAYS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No.36092/2018 (delay)

1. This is an application seeking condonation of delay of 1633 days in filing the appeal.
2. Counsel for the appellant submits that the appeal could not be filed within the time allowed as the appellant had sought legal advice from his counsel and it was decided to assail the judgment of the learned Single Judge. It is further submitted that the counsel had initially told him that he would do the needful and inform him that the case has been filed before the Court. Thereafter, he did not take his phone calls and when he visited the office, he learnt that the office had been shifted. It has further been contended that subsequently, the appellant contacted another counsel who sent the legal notice dated 07.11.2017 to the respondent. It is also submitted

that the appellant thereafter contacted the present counsel in the month of June, 2018 which resulted in delay of 1633 days in filing the appeal.

3. We have heard counsel for the appellant.

4. The appellant seeks condonation of delay as per the averments made in paragraphs 3, 4 and 5 of the application which we reproduced below:-

3. That the appellant sought legal advice from his counsel and it was decided to assail the judgment of Ld. Single Judge before the Division Bench in appellate jurisdiction. The counsel initially told him that he is doing the needful and informed that the case has been filed before the Hon'ble High Court. However, thereafter did not take his call and when visited to his office then it could be found that he has changed his office from there. Thereafter, the appellant contacted another counsel, who sent a legal notice dated 07.11.2017 to the respondent, which was replied by them vide their letter dated 16.11.2017 in which the respondent have said that they did not receive the copy of award dated 24.12.2010 and order dated 31.01.2014.

4. That thereafter the appellant forwarded the copies of the award and order passed by Hon'ble Court to the respondent on 02.02.2018, however the respondent have not replied till date.

5. That now the appellant contacted the present counsel in the month of June 2018 to prepare his case and file it before Hon'ble Court, however while doing all the aforesaid events there has been a delay of 1633 days in filing the present LPA before this Hon'ble Court.

5. Reading of the application shows that the same is highly casual in nature, is vague and lacks material particulars. It may be noted that in this case the order of the labour Court dated 23.08.2010 was assailed by the respondent by filing a writ petition. The aforesaid writ petition was decided on 31.01.2014. The appellant in our view has failed to disclose sufficient grounds for condonation of delay. The appellant has simply shifted the burden on the counsel whose name has not been disclosed neither application shows as to whether any action has been initiated against the counsel.

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.”

9. Applying the law to the facts of the present case, we find that the application seeking condonation of delay is not bonafide. The delay is on account of carelessness and inaction on the part of the appellant. Thus, in our view, the inordinate delay in this case cannot be condoned.

10. Resultantly, the application is dismissed.

LPA 511/2018

11. In view of the order passed in the application seeking condonation of delay, the LPA is disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 5, 2018

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