

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

+ **RFA No.326/2018**

% **20th April, 2018**

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. Sanjeev Sagar, Advocate.

Versus

DELHI LIGHTING INDUSTRIES Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.15294/2018 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.15297/2018 (for condonation of delay in re-filing)

2. For the reasons stated in the application, delay of 140 days
in re-filing the appeal is condoned.
C.M. stands disposed of.

**RFA No.326/2018 and C.M. Nos.15295/2018 (stay) & 15296/2018
(for condonation of delay of 525 days)**

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the Delhi Development Authority (DDA) impugning the judgment of the Trial Court dated 1.2.2016 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.4,21,680/- being the amount claimed by the appellant/plaintiff for carrying out the work not executed by the respondent/defendant with respect to a contract awarded to the respondent/defendant and which was terminated at risk and cost of the defendant.

4. This appeal is filed with delay of 525 days. It is also required to be noted that suit has been dismissed because there is no evidence which was led by the appellant/plaintiff because only one witness of the appellant/plaintiff filed his affidavit by way of evidence but he did not appear for cross-examination after appearing once for the cross-examination, and therefore in the absence of complete cross-examination, the examination-in-chief of the witness could not be looked into. It is also required to be noted that respondent/defendant filed a counter claim, and which was a counter blast to the suit of the

appellant/plaintiff, and since the appellant/plaintiff did not lead any evidence in the suit, the respondent/defendant also did not lead any evidence in the counter claim and consequently by the impugned judgment, both the suit of the appellant/plaintiff and the counter claim of the respondent/defendant, have been dismissed.

5. Let us first examine as to whether appellant/plaintiff has given sufficient reasons for condonation of substantial delay of 525 days. As usual, and not unexpected from an authority like the DDA, the application for condonation of delay except stating delay is caused on account of consultation in the legal department and time taken by the Advocate to file the appeal, there is no satisfactory explanation constituting sufficient cause which is given for every week or month of delay. In order to appreciate complete lack of substance in the application seeking condonation of delay, paras 3 to 8 of the application are reproduced below:-

“3. That the appellant submits that as per order was passed by court below on 01/02/16, thereafter the same was sent to legal department of the appellant as well as the counsel was consulted on the said issues. Based on the opinion it was decided to file the present appeal as the issue involved was purely legal in nature and a serious law point being involved.

4. That in any case post handing over file to the counsel, the appellants counsel took some time to prepared the appeal & file the same post receipt of instructions of the appellant bank. Thus during

this period also sometime was lost in a reasonable manner particularly keeping in mind the issues involved.

5. The appellant is aware that the reasoning of in house procedural delays as presented before this Hon'ble court is solely as presented before this Hon'ble court is solely due to mistakes of the appellant and no one can be blamed on this count however taking a very true stand it is submitted that the appeal got delayed unexpectedly. The delay on this aspect is neither intentional nor deliberate on the part of the appellant or its counsel.

6. That even otherwise also the appellant accepts its mistake and expects this court to be kind enough to accommodate the appellant for the delay caused unintentionally.

7. The appellant submits that as per law the appeal could be file within 90 days from the date of receipt of order i.e. on or before 04/03/16. The appellant is also aware that this court can condone the delay post the said period and thus the delay is counted from 01/02/16 then the delay is 525 days approx. Thus the appellant submits that the delay is reasonable and it is due to these issues as explained in the foregoing paras above and therefore needs to be condoned in wake of the submissions made herein above.

8. It is submitted that the delay in filing appeal is not intentional and deliberate but is clearly owing to the irregularities which has led to delay to the end of the appellant. The appellant submits that it never expected to have an appeal in this case but the circumstances have compelled to the appellant to take this course. This delay is unintentional and not deliberate but due to above mentioned reason."

6. In my opinion, bland averments and statements given in para 3 to 8 of the application seeking condonation of delay are an apology for the expression "sufficient cause" found in Section 5 of the Limitation Act, 1963 and Order XLI Rule 1 CPC, and delay cannot be condoned on the bland averments as have been made in paras 3 to 8 of the application. Therefore there is no ground for condonation of delay. In any case however I have yet examined the matter on merits.

7. As already stated above, the appellant's/plaintiff's suit has been dismissed on account of no evidence being led by the appellant/plaintiff and this is recorded in para 8 of the impugned judgment, and which para 8 reads as under:-

“8. On 8.4.2010, the witness of the plaintiff namely Sh.S.C. Patel, Executive Engineer, tendered his part examination-in-chief but thereafter he never appeared to complete his examination despite repeated opportunity and hence on 01.02.2016, the evidence of the plaintiff has been closed. In view of the fact that the plaintiff has failed to lead any evidence to discharge the initial onus upon it, the defendant has also closed their evidence.”

8. The subject suit was filed for recovery of Rs.4,21,680/- on account of the respondent/defendant having failed to execute the entire work of the contract of work was awarded to it and whereby the contract was awarded at risk and cost of the respondent/defendant to M/s Panun Electrocon Pvt. Ltd. and for the difference being the enhanced cost of work executed, the subject suit was filed.

9. Once the appellant/plaintiff led no evidence then I fail to understand as to how the suit could have been decreed, and the same was therefore rightly dismissed by the trial court. Obviously this appeal is also filed in my opinion to create some sort of answer to audit objections which would have been raised or the accountability which could be been

fixed on account of negligence in pursuing the suit filed by the appellant/plaintiff.

10. In my opinion, though no case is made out for interference in this appeal challenging the impugned judgment, both on the ground of lack of sufficient cause for condonation of delay and even on merits, and therefore the appeal is dismissed, but a copy of this judgment be placed before the Vice Chairman of DDA to examine the facts of the present case as also the observations made in the present judgment which show clear negligence in pursuing of legal cases which cause substantial monetary loss to the appellant/plaintiff. Vice Chairman of the DDA should direct an enquiry to be conducted by the a competent official and fix accountability on the negligent officers of the appellant/plaintiff and thereafter take appropriate action against all the negligent officers who are employees of the appellant/plaintiff.

11. Appeal is accordingly dismissed with the aforesaid observations. Affidavit be filed by the appellant/plaintiff within three months from today to show the follow up action taken pursuant to the directions issued in the present judgment.

APRIL 20, 2018
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VALMIKI J. MEHTA, J