

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 1023 of 2018**

Arun Kumar Gupta, S/o Late Mohanlal Gupta, Aged about 47 years, Resident of Akash Bhojnalaya, Village – Urla, Ward No. 14, P.S. Abhanpur, Tehsil -Abhanpur, District – Raipur, Chhattisgarh.

----Petitioner/plaintiff

Versus

1. M/s. Shiva Construction Co., Through: Suresh C. Mirchandani, 22 Para, Majestic E-8 Extension, Trilanga, Bhopal (M.P.)
2. M/s. Anil construction Co. Through: Anil Verma, Partner Now, Director, M/s. Anil Buildcon (I) Pvt. Ltd., 14/1152, Vinobha Nagar, Bilaspur (C.G.)
3. Shri Anil Verma, The Arbitrator, C/o M/s. Anil Buildcon (I) Pvt. Ltd., 14/1152, Vinobha Nagar, Bilaspur (C.G.)

---- Respondents

For Petitioner	: Mr. Anand Mohan Tiwari, Advocate.
For Respondent No.1	: Mr. K.A. Ansari, Sr. Advocate assisted by Mr. Ramesh Kumar Naik, Advocate.
For Respondent No. 2	: Mr. Kripesh G. Kela, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/03/2019

With the consent of the parties, the matter is heard finally.

1. In an arbitral dispute allegedly existing between the parties, the Arbitral Tribunal passed an award of Rs. 1,45,61,814/- against the petitioner by award dated 23.12.2007, which he challenged by filing an application under Section 34 of the Arbitration & Conciliation Act, 1996 (henceforth "Act, 1996) before the Commercial Court on 15.05.2017 but the said application got dismissed in default on 20.12.2017. The petitioner preferred application for restoration of the said application along with application for condonation of delay in filing the same on 29.06.2018, that was

dismissed by the impugned order dated 29.09.2018 by the Commercial Court (District Level), Atal Nagar, against which instant writ petition under Article 227 of the Constitution of India has been filed.

2. Shri Anand Mohan Tiwari, learned counsel appearing for the petitioner would submit that the Commercial Court is absolutely unjustified in holding that no sufficient cause has been shown by the petitioner for non-appearance on 20.12.2017 when the case was called out for hearing and, therefore, the impugned order be set aside and matter may be restored to the file of Commercial Court for hearing and disposal in accordance with law.

3. On the other hand, Shri K.A. Ansari, learned Senior Counsel appearing for respondent No.1 would submit that the learned Commercial Court is absolutely justified in dismissing the petitioner's application for restoration of the application as no sufficient cause was shown by the petitioner on the date when the case was called out for hearing, therefore, writ petition deserves to be dismissed.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection.

5. Petitioner's application under Section 34 of the Act, 1996 was dismissed in default on 20.12.2017 for his non-appearance. He filed application for restoration along with application for condonation of delay in filing the said application, that was dismissed by the Commercial Court vide impugned order dated 29.09.2018. However, it is an admitted position on record that the petitioner's father died on 27.11.2017 due to cancer and, thereafter his grandmother also passed away on

07.4.2018. It is the case of the petitioner that on account of sudden death of his father prior to date of dismissal of the application under Section 34 of the Act of 1996 i.e. on 20.12.2017, he could not appear on the date when the case was called out for hearing and thereafter he remained busy in performing last rituals and other ceremonies of his father and immediately thereafter his grandmother fell ill and died on 07.04.2018 and, therefore, the delay in filing the restoration application deserves to be condoned.

6. The Supreme Court in **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others**¹ has held that sufficient cause has to be construed liberally. Relevant paragraph of the report states as under:-

“3. The legislature has conferred the power to condone delay by enacting [Section 5](#) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

1 (1987) 2 SCC 107

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore. set

aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

(7) Reverting to the facts of the case in light of the principle of law down by the Supreme Court in the above-cited case (supra), it is quite vivid that cause shown by the petitioner that his father died on 27.11.2017 i.e. prior to the date when the case was dismissed in default i.e. 20.12.2017 and thereafter his grandmother died on 7.4.2018 and, therefore, he could not prefer application for restoration right in time, which appears to be sufficient cause for non appearing on the date when the case was called out for hearing.

(8) In that view of the matter, the impugned order is set aside. Application under Section 34 of the Act, 1996 filed by the petitioner is restored to the file of Commercial Court (District Level), Atal Nagar for hearing and disposal in accordance with law subject to payment of cost of Rs. 5,000/- payable to the respondents. The said Court is directed to conclude the hearing of the application expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

(9) The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

