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

Date of Decision: 16.10.2019

+ **FAO(OS) (COMM) 285/2019**

M/S AMBUJ HOTEL & REAL ESTATE (P) LTD

.... Appellant

Through: Mr. Sanjeev Sahay, Mr. Sulalit
Singh Sisodia, Mr. Archit
Kumar & Mr. Jhum Jhum
Sarkar, Advs.
Mr. Rajiv Ranjan Mishra, Adv.
for applicant.

versus

INDIAN RAILWAY CATERING & TOURISM CORP LTD

.....Respondent

Through: Mr. Nikhil Majithia, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

CM APPL. No. 43506-43507/2019 (exemptions)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

CM APPL. No. 43508/2019 (condonation of delay)

This is an application seeking condonation of 302 days delay in filing the present appeal.

Mr. Sanjeev Sahay, learned counsel appearing for the appellant submits that the delay in filing of the appeal is on account of cogent reasons and unforeseen circumstances and not on account of any negligence or inaction on the part of the appellant.

In the application seeking condonation of delay, the following material averments have been made by the appellant/applicant :

“3. That the earlier counsel Mr. Pradeep Ranjan Tiwari engaged in this matter expired during the pendency and the counsel namely Prafulla Tiwary, appeared on behalf of the petitioner was actually engaged by him and was not in direct contact with the present applicant, and thus the confusion arose between the earlier counsel and the applicant.

4. That the applicant anyhow contacted the new counsel after several attempts regarding the information about his case on which the new counsel gave him false assurances that they are looking after his matter and will be filing their vakalatnama after taking due authorization.

5. That the applicant tried to contact the new counsel on many occasions for information regarding status of the case and the date before this Hon'ble Court on which the new counsel used to say that the matter has not been listed yet, and he will inform accordingly once it is listed.

6. That since few months, the new counsel has not been in the contact of the applicant as he is not responding to his calls and messaging and has not updated the status of the present case since past few months.

7. That being concerned about the said matter and in order to clarify the status of our case, the applicant consulted and engaged the present counsel few days ago

to get status of his case. That the present counsel informed the applicant that the said matter has been disposed off as the same was listed on 15.10.2018 and the earlier engaged counsel did not argued on behalf of the applicant stating the reason that he has no instructions from the client.

8. That believing on the submission of the earlier counsel, this Hon'ble Court proceeded with the matter and passed the said judgment in favour of the respondent by setting aside the Arbitral Award.

9. That sooner the applicant came to know, the same has been moved before this Hon'ble Court and the good and sufficient reasons stated hereinabove.”

2. Counsel for the respondent on the other hand submits that the application is not supported by any affidavit. He also submits that it is becoming common practice to blame the counsel for delay in taking timely steps. He submits that if required, he will obtain an affidavit from the counsel who is being blamed for the delay, who has a different story to tell.

3. We have heard learned counsel for the parties. We have also examined the application seeking condonation of delay.

4. A careful reading of the entire application shows that the application is vague and lacks any specifics and particulars. Not a single date has been mentioned : as to when the earlier counsel expired; or when new counsel was appointed ; nor is there any reference to any correspondence between the applicant and the counsel to bear-out the applicant's contentions.

5. The law in relation to seeking condonation of delay is well-settled. First and foremost, the court is to be satisfied that the delay is

explained by cogent reasons ; and that the application is bona-fide. In the present case, we are not convinced that the delay has occurred for cogent reasons or that the application is *bona fide*.

6. In the case of ***P.K. Ramachandran vs. State of Kerala and Another*** reported as (1997) 7 SCC 556, the Supreme Court has, in its order dated 19.09.1997, held as under :

“3. It would be noticed from a perusal of the impugned order that the court has not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is an essential prerequisite to condonation of delay.

6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No costs.”

7. Even otherwise this appeal arises under the Commercial Courts Act, 2018 where very strict statutory timelines are laid down for compliance, which do not give much leeway for condoning delay, especially where the Court is not satisfied as to the cogency of the reasons cited for the delay.

8. In addition, we find that while the entire delay has been sought to be placed at the advocates’ doorstep, no action has been

initiated by the petitioner against any of the advocates before the Bar Council.

9. It is also relevant to notice that the appellant in the present case is a private limited company and not an individual litigant ; which company, it would be reasonable to suppose, would have a legal department or at least a group of individuals managing their legal affairs, which makes it even more un-believable that such inordinate delay was occasioned by reason of neglect on the part of the advocates with no follow-up or diligence shown by any of the officers in-charge of the legal affairs of the appellant company.

10. In this view of the matter, we are not inclined to condone the delay in filing the present appeal.

11. Accordingly, the application for condonation of delay, and consequently the appeal itself, stand dismissed.

12. Pending applications, if any, are also dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 16, 2019/uj