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

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Date of Decision: 31.01.2019

+ CS(COMM) 21/2017

SMT SUSHIL CHAWLA Plaintiff
Through Mr.Tarun Singla and Mr.Vishal
Bhardwaj, Advs.

versus

HP INDIA SALES PVT LTD Defendant
Through Mr.Parminder Singh,Mr.Kanav Vir
Singh and Mr.Rishi Aggarwall, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

IA No. 10438/2017

1. This application is filed under Order 7 Rule 11 CPC seeking rejection of the plaint. It is pleaded in the application that the suit is barred by limitation on the face of it.
2. The present suit is filed by the plaintiff for a recovery of Rs.3,42,59,576/-. It is the case of the plaintiff that she is the proprietor of the Firm-S.D. Infosys and is engaged in the business of sale of H.P. Computers, laptops, printers, scanners, servers, etc. In 2006, the plaintiff's Firm was appointed as a commercial business partner by the defendant Company for the sale of H.P. Computers, laptops, printers, scanners, etc. to corporates, schools, colleges, small scale industries for Delhi-NCR Region. It is pleaded

that the plaintiff maintained a regular and running ledger/statement of account in the name of the defendant in the ordinary course of business. The defendant after the sales used to pay commission/incentive to the plaintiff for the sale of the mentioned goods. Over a period of time, the plaintiff developed good faith in the defendant. However, with the passage of time, there were lapses on the part of the defendant in clearing the dues. However, the plaintiff believing the assurances and promises continued selling defendant's product. The defendant stopped making the payment of dues and incentives by August-September 2010. The plaintiff ran short of funds and therefore, decided to recover the payment of incentives/commission from the defendant. Hence, the plaintiff started making requests to the defendant to make the payment of the outstanding dues through e-mails, etc. In the suit it is claimed that as per the ledger/statement of account maintained in the name of the defendant, a sum of Rs.2,38,60,817/- is outstanding as on 13.01.2015.

3. I have heard learned counsel for the parties.

4. Learned counsel for the defendant has pleaded that the suit is hopelessly barred by limitation. The suit was filed on 24.02.2016. In another suit being CS(OS) 1062/2011 filed by a third party against the plaintiff herein an interim order was passed attaching a sum of Rs.98,66,500/- allegedly payable by the defendant to the plaintiff. This court vide order dated 12.09.2012 accepted the plea of the defendant herein that only a sum of Rs.2,26,503/- is payable and no more. This court directed the defendant to deposit the said amount in court in that suit. Needful was done on 05.03.2013. It is pleaded that the payment was towards full and final settlement of the dues of the plaintiff. The present suit filed on 24.02.2016 is

hopelessly barred by limitation. It has also been pointed out that there is a delay of 274 days in re-filing of the suit on account of which even otherwise the suit is liable to be dismissed. Learned counsel for the defendant has relied upon the judgment of the Supreme Court in the case of *State of Gujarat vs. Kothari & Associates, (2016) 14 SCC 761* to contend that Section 19 of the Limitation Act has no application.

5. Learned counsel for the plaintiff relies upon Section 19 of the Limitation Act to contend that part payment was made by the defendant on 05.03.2013 and in terms of Section 19 of the Limitation Act, the limitation period gets extended. The suit is filed on 24.02.2016 which is well within three years from 05.03.2013. He has also stated that IA No. 113/2011 which is for condonation of delay be allowed. He states that there is a delay of 274 days in re-filing of the suit on account of the fact that the plaintiff was unwell and could not pay the necessary court fees and also follow up with the lawyers for having the same re-filed in time.

6. I may first look at para 16 of the plaint regarding the cause of action pleaded by the plaintiff which reads as follows:-

“16. That the cause of action for filing the present suit arose in favour of the Plaintiff and against the Defendant on all the dates, when the Plaintiff was assigned the responsibilities of negotiating deals with the Corporate, Schools, Colleges and Small Scale industries, for the sale of H.P. Computers, laptops, printers, scanners, servers etc. The cause of action again arose on when the Plaintiff was given monthly and quarterly sales targets by Defendant in the form of Program vide letters with the programme codes and through emails. The cause of action again arose on all the dates when the defendant had paid the commission/ incentive to the Plaintiff for the sale of the goods and the same was adjusted in the running statement of account maintained by the plaintiff in the name of the defendant. The

cause of action further arose on 27.02.2013, when the defendant admitted/acknowledge the liability to deposit the part payment with the Hon'ble High Court of Delhi. The cause of action further arose in March, 2013 when the defendant deposited the part amount with the Hon'ble high court of Delhi acknowledging the liability. The cause of action further arose on all the material dates when the Plaintiff had requested the Defendant to remit the outstanding payment but the Defendant despite the receipt and acknowledgement of the said demand notices had failed to comply with the notices served upon the defendant. The cause of action is still continuing and subsisting as the Defendant have failed to pay Rs.3,42,59,576/- (Rupees Three Crore Forty Two Lakhs Fifty Nine Thousand Five Hundred & Seventy Six Only) due and outstanding on account of principle and interest.”

7. Hence, as per the plaintiff the cause of action arose on 27.02.2013 when the defendant admitted/acknowledged the liability and deposited part payment with this court on 05-03-2013. It is the case of the plaintiff that this part payment tentamounts to acknowledgment of debt under Section 19 of the Limitation Act and extends the period of limitation.

8. Section 19 of the Limitation Act reads as follows:-

“19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation. – For the purposes of this section.

- (a) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment.
- (b) “debt” does not include money payable under a decree or order of a court.

9. Reference may be had to the application filed by the defendant before this court in the other suit being CS(OS) 1062/2011. This application was filed under Section 151 CPC on behalf of the defendant herein seeking permission to deposit an amount of Rs.2,26,503/- in compliance of the order dated 12.09.2012. In this application, it is pleaded that the payment being made may be treated as full and final settlement of the amount the defendant herein has to pay to the plaintiff. It is also pleaded that it is the plaintiff herein who has to pay huge amount to the defendant herein and liberty was sought to initiate appropriate proceedings against the plaintiff herein.

10. The Supreme Court in *State of Gujarat vs. Kothari & Associates(supra)* while interpreting Section 19 of the Limitation Act held as follows:-

“14. Furthermore, in J.C. Budhraj v. Chairman, Orissa Mining Corporation Ltd. and Anr.: (2008) 2 SCC 444, it has been held that the effect of Section 19 would be to allow a fresh period of limitation with regard to the 'existing debt' in respect of which acknowledgment and payment has been made. It would not extend the period of limitation for any fresh claim, or any amount not accepted by the other party. In the factual scenario before us, the payment of the Final Bill and Security Deposit could not be construed to accept or acknowledge the damages raised by the Respondent and therefore Section 19 would not per se extend the period of limitation. Furthermore, there could be no extension under Section 18 on account of the acknowledgement in writing,

as at each point that the Respondent raised a claim for damages, it was specifically refuted by the Appellant State, and the amounts that were accepted by the Appellant State were limited to the liabilities within the contract, not fresh liabilities for damages.”

11. Section 19 of the Limitation Act applies only when the debt is existing and in respect of which a part payment is made. The payment has been on account of the existing debt. The payment fails in that criteria. In the present case, the defendant made the payment in full and final settlement of all the dues. The payment so tendered by the defendant pursuant to the orders of the court passed in a suit filed by third party against the plaintiff does not attract section 19 of The Limitation Act as no payment was made for an existing debt.

12. Matter may be looked from another aspect. Reference may be had to the explanation to Section 19 of the Limitation Act which provides that debt does not include money payable under the order of a court. In the present case, the payment in any case was effected pursuant to an order of a court in a suit filed by third party against the plaintiff. Hence, the provision under Section 19 of the Limitation Act would even not otherwise get attracted to extend the period of limitation

13. The facts show that as per the plaintiff the defendants have stopped making payment of dues and incentives by August-September 2010. By order dated 12.9.2012 in a suit filed against the plaintiff by a third party the defendant was directed to deposit a sum of Rs.2,26,503/- i.e. the amount which was accepted by the defendant as its liability to the plaintiff. As noted above, this payment does not attract section 19 of the Limitation Act. The

suit was finally filed on 24.2.2016 i.e. almost 5½ years after the defendant had admittedly stopped making payment to the plaintiff. Clearly the suit was barred by limitation.

14. I may note that another aspect here relates to re-filing of the suit. The suit having been filed on 24.02.2016, there is a delay of 283 days in re-filing. As noted below in my opinion, no ground is made out to even condone the delay in re-filing the suit. Hence even if the plea of the plaintiff regarding extension of limitation due to application of Section 19 of The Limitation Act is accepted the suit would still be barred by limitation.

15. The present application is accordingly allowed.

IA No. 113/2017

1. This application is filed seeking condonation of delay of 283 days in re-filing of the suit. The relevant paras of this short application read as follows:-

“2. The Plaintiff had prepared and filed the above Suit for recovery in the filing counter. However, the objections could not be removed at one instance and the Plaint was refilled on several occasions.

3. That due to the health reason the plaintiff remained on continuous treatment for several ailments and as such she was unable to contact her lawyer, despite being informed by the counsel about the objections from the registry and could not re-file the Plaint.

4. That the plaintiff could only visit the office of the counsel only on 21.11.2016 and after providing the documents, the present application was prepared and matter could be refilled.

5. That the non-filing of the present Plaint is neither intentional nor deliberate but due to the aforesaid reasons.

6. The Plaintiff shall suffer an irreparable loss and injury if the present prayer is not allowed.”

2. The only ground given is that due to health reason the plaintiff remained on continuous treatment and was unable to contact the lawyer despite being informed about the objections. Nothing has been placed on record to show the health problems of the plaintiff. Learned counsel for the plaintiff submits that an additional affidavit has been filed on 19.01.2019 placing on record certain documents which show the health conditions of the plaintiff. The said affidavit is not on record.

3. Learned counsel for the plaintiff has also relied upon the judgment of this court in *J.L.Gugnani vs. Krishna Estate, 2011 (184) DLT 410* where this court held as follows:-

“58. It is also trite that so far as condonation of delay in refiling is concerned, the same has to be liberally granted so as to advance substantial justice. However, it is well settled that the applicant has to disclose some grounds to enable the court to hold that the delay deserves to be condoned.”

4. Reference may be had to the judgment of the Supreme Court in the case of *H.Dohil Construction Co.P.Ltd. v. Nahar Exports Ltd., (2015) 1 SCC 680* where the Supreme Court was dealing with a case where delay of 9 days in filing the appeals and 1727 days in re-filing the appeals. The court held as follows:

“23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further,

when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.”

5. Similarly, the Division Bench of this court in the case of ***Asha Sharma & Ors. v. Sanimiya Vanijiya P.Ltd. & Ors., 162 (2009) DLT 542*** held as follows:

“23. It is trite law that Rules of Procedure being hand-made of justice, a party should not be refused relief merely because of some mistakes, negligence or inadvertence. Rules of Procedure are designed to facilitate justice and further its ends. But, even if we take a rather liberal approach in this matter, we are unable to find any good ground for condonation of delay in filing this appeal. None of the reasons given in the application is convincing or logical. The impression we gather is that the appellants deliberately delayed filing of the appeal so as to prolong the litigation. It cannot be said that even if the appellants were totally negligent and careless and have not come forward with any worthwhile explanation for the delay, the court ought to condone the delay in re-filing. The Rules framed by the High Court cannot be allowed to be taken so casually and there will be no sanctity behind the rules if every delay in re-filing, is to be condoned irrespective of howsoever unreasonably long and unexplained it be, and howsoever mandatory be the nature of the documents, non-filing of which renders the Appeal defective. We cannot condone the delay merely because an application for condonation of delay has been filed. No court would not like to reject an appeal as time barred unless there are strong reasons, which compel the court to take such a view. Some indulgence and a liberal view in such matters is well-accepted but to say that the court has no option in the matter and must accept the Memorandum of Appeal irrespective of the nature of the objections and delay in re-filing, even where there is no reasonable explanation to justify the delay, would only be travesty of justice and will be as good as removing the relevant Rule in High Court Rules and Orders, from the Statute Book.”

6. Hence, the legal position is that where negligence and casual approach is there in re-filing, the court is not powerless to reject an application seeking condonation of delay. In the present case, in my opinion, the plaintiff has been extremely casual and grossly and wilfully negligent. The explanation given for the delay of 283 days in re-filing of the suit does

not show any bona fide on behalf of the plaintiff. A bald averment is made that the plaintiff due to health reasons could not contact her counsel. The grounds given seeking condonation of delay in refilling the suit are make belief. It appears to be only a mechanism used to try and save limitation and to keep the suit pending in objections. In these facts, I am not inclined to condone the delay. There is no ground made out to condone the delay. The application is accordingly dismissed.

CS(COMM) 21/2017

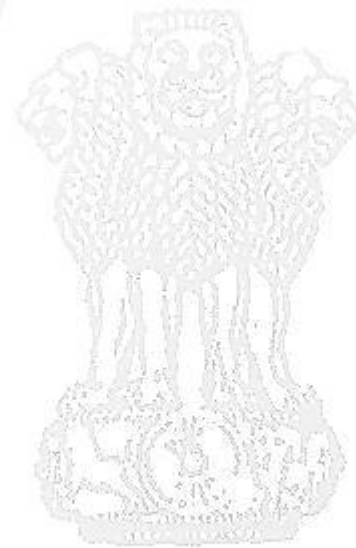
The suit and the all pending applications stand dismissed.

JAYANT NATH, J.

JANUARY 31, 2019

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Corrected and signed
on 06-03-2019



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