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

% *Date of Order: 30th April, 2019*

+ RFA(OS) 24/2019, CM APPLs 12295-96/2019

SANJIV JAIN & ANR

..... Appellants

Through Mr. Bhuban Guglani, Mr. Partha J. Deha, Ms. Palak Arora, Ms. Mythili Srinivasamurthy & Mr. Aditya Shrotriya, Advocates.

versus

KUANTUM PAPERS LIMITED & ANR

..... Respondents

Through Mr. Aman Shankar, Mr. Gagandeep Singh & Ms. Anjali Sharma alongwith A.R. Mr.Sanjay Khosla, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL 12296/2019 (delay in filing)

1. This is an application filed by the applicant/appellant under Section 5 of Limitation Act read with Section 151 of Code of Civil Procedure, 1908 seeking condonation of 574 days delay in filing the present appeal.
2. Some necessary facts required to be noticed for disposal of this application are that respondent no.1 had filed a suit under Order XXXVII of CPC for recovery in the sum of Rs.9,25,92,523/-. The defendants including the appellant herein filed an application under Order XXXVII Sub-rule 3 seeking leave to defend, which was

dismissed in default by order dated 27.02.2017. By a subsequent order dated 10.07.2017, the suit was decreed against the defendants. It is the case of the appellant that on 03.12.2018, the appellant was served with the summons from the executing court and it is on this date that he became aware that the application seeking leave to defend had been dismissed. The application also discloses that upon receipt of this notice from the executing court, the appellant contacted the counsel engaged in the matter. The appellant was informed that the counsel had left the law-firm and he was no longer associated with the said firm. The appellant thereafter engaged a new counsel who informed the appellant of the order dated 10.07.2017.

3. The applicant/appellant has further averred in the application that subsequently in or around December, 2018 to January, 2019, the appellant lodged a complaint against respondent no.1 and Princess Choice Hotel Pvt. Limited and Upendra Soni and Shalini Soni of the fraud played upon him in collusion and connivance of respondent no.1. Another ground raised for seeking condonation of delay is that the appellant was collecting documents and filing complaint against respondent no.1 and the entire procedure took time in filing the present appeal.
4. Mr. Bhuvan, counsel for the applicants/appellants further submits that prior to filing of this appeal, an application was filed under Order XXXVII Sub-rule 4 seeking recall of judgment and decree. This application was filed on 11.02.2019 and the same was dismissed on 14.02.2019. Counsel further contends that he has a strong case on merits. It has also been submitted that it has repeatedly been held by the

Supreme Court that while deciding the application, courts must adopt a liberal approach and meritorious matter should not be dismissed purely on the technical ground. Counsel also contends that the appellant would not make to suffer inaction on the part of the counsel. It is submitted that fees were paid and counsel was engaged and the appellant was in bonafide belief that all the steps would be taken by the counsel to benefit and safeguard the appellant.

5. Counsel for the respondent submits that the appellant did not diligently pursue this matter, which is evident from the fact that neither the appellant nor the counsel appeared when the application seeking leave to defend was listed. It is submitted that it has become a practice that the parties for their inaction blame the counsel. It is submitted that admittedly the appellant had engaged a law firm and merely because one of the counsels has disassociated himself from the law firm does not mean that the matter could not have been pursued by the firm. It is further submitted that the application seeking condonation of delay is vague, lacks material particulars and is extremely casual in nature. He submits that substantial rights have accrued in his favour, which should not be lightly disturbed by this court, especially when the application lacks bonafide and the delay is on account of sheer carelessness and inaction on the part of the appellant.
6. We have heard learned counsel for the parties. No doubt, it is a settled law that Courts must adopt a liberal approach while deciding an application seeking condonation of delay. It is also a settled law that while considering an application seeking condonation of delay, the court must be satisfied that the delay was on account of sufficient cause

and the application is bonafide. Sufficient cause for delay and not period of delay is to be considered. While a short period of delay may not be condoned, on the other hand, a long period of delay may be condoned provided the applicant is able to show sufficient cause. It has been so held in the case of *P. K. Ramachandran vs. State of Kerala* reported at (1997) 7 SCC 556.

7. In the case of *Ramlal & Others v. Rewa Coal Fields Ltd.*, reported at AIR 1962 SC 36 it has been held that the court must not lose track of the fact that while passing a decree a substantial right accrues in favour of the respondent and this right should not be disturbed lightly.
8. In the case of *Balwant Singh Vs. Jagdish Singh*, reported at 2010 (8) SCC 685, while deciding an application under Order 22 Rule 9 of CPC and Section 5 of the Limitation Act, it was held as under:

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. **Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to**

both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

(emphasis added)

27. The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.

28. In *State of Bihar v. Kameshwar Prasad Singh* [(2000) 9 SCC 94 : 2000 SCC (L&S) 845] this Court had taken a liberal approach for condoning the delay in cases of the Government to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications.”

9. We have carefully examined the application seeking condonation of

delay. The only ground, which has been alleged is that the counsel, who had been appointed had left the firm and was no longer associated with the law firm. It cannot be disputed that the law firm ordinarily would comprise of more than one lawyer and merely because one lawyer left the law firm, cannot be a ground to condone the delay. Additionally, there was no explanation as to why the appellant did not pursue his matter for a long gap. Even otherwise, it is admitted that the appellant became aware of the order on 03.12.2018 and even thereafter time was spent upto 11.02.2019 to file an application under Order XXXVII Sub-rule 4. The application under Order XXXVII Rule 4 was dismissed by the learned Single Judge on the ground as noticed in paras 12 and 13, which read as under :

“12. In response to a pointed query raised by this Court, learned senior counsel appearing for defendant no.2 admits that the defendant no.2 has not issued any notice to the concerned counsel/law firm and has not initiated any disciplinary proceeding or filed any complaint against the said counsel/law firm. Additionally, the learned senior counsel has not provided a satisfactory explanation as to why the defendant no.2 stopped observing the matter and did not exchange any correspondence with the counsel/law firm.

13. The present applications have been filed after a delay of 575 and 715 days respectively, which is indicative of the lackadaisical attitude adopted by the applicants/defendant nos.1 to 3 in pursuing the present suit and the same does not inspire any confidence.”

10. In our view, the application is neither bonafide nor discloses sufficient grounds seeking condonation of delay. Moreover, the respondent rightly submits that the appellant was all along aware of the pendency of the

execution and it is only when the bank account was attached, he took steps to move an application before the learned Single Judge. We find no ground to condone the delay. Resultantly, the application is dismissed.

RFA(OS) 24/2019 & CM APPL 12295/2019 (stay)

11. In view of the order passed in the application seeking condonation of delay, the appeal as also CM APPL 12295/2019 stands dismissed.

G.S. SISTANI, J

JYOTI SINGH, J

APRIL 30, 2019

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