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

*Date of Decision: 18.01.2019*

+ **RFA(OS) 74/2018 & CM No. 43620/2018 (Stay)**

**SAVITRI GAUTAM**

..... Appellant

Through: Mr. Pardeep Dhingra, Mr. Mohit  
Nandwani and Ms. Hitendra, Advs.

Versus

**S C AGGARWAL (DECEASED) THR LRS**

..... Respondents

Through: Mr. Hemant Chaudhri and Mr. Arjun  
Bhaskar, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE G.S. SISTANI**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**G.S. SISTANI, J. (ORAL)**

**CM No. 43619/2018 (delay of 785 days)**

1. This is an application filed by the appellant seeking condonation of 785 days delay in filing the present appeal. Learned counsel for the appellant/applicant submits that the delay is on account of the fact that the applicant is an illiterate lady, aged 53 years. Her husband is a handicapped person and thus, the appeal could not be filed within the period of limitation. The second ground which has been urged seeking condonation of delay is that post passing of the preliminary decree on 19.07.2016, the matter was referred to the mediation centre and the matter remained pending for almost two years and thus, during this period, no appeal could be filed as the

appellant/applicant was hopeful for an amicable settlement.

2. Learned counsel further submits that it is a settled law, that while deciding an application seeking condonation of delay, the courts must adopt a liberal approach. He has placed strong reliance on a judgment reported at **1998 (7) SCC 123** titled as **N. Balakrishnan vs. M. Krishnamurthy**, more particularly paragraphs 9, 10, 11, 12 and 13. Additionally, reliance is placed on **Ummer vs. Pottengal Subida** reported at **2018 (3) SCALE 696**, **State of Rajasthan and Another vs. Bal Kishan Mathur** reported at **2014 (1) SCC 592** and **Radha Krishna Rai vs. Allahabad Bank and Others** reported at **(2000) 9 SCC 733**.
3. Mr. Chaudhri, learned counsel appearing for the respondent No. 1 has opposed this application. It is contended that the application is not *bona fide* and the same does not disclose the correct and true facts. Mr. Chaudhri does not dispute that after the preliminary decree was passed on 19.07.2016 and the matter was referred to the mediation centre for the purpose of ascertaining as to whether the property can be divided by metes and bounds and if not, the mode of partition, but contends that this did not prevent the appellant/applicant from filing an appeal and infact during the period the matter was pending before the Mediation Centre, the intent was to implement the order.
4. In support of this submission, Mr. Chaudhri points out that both the parties jointly applied to the L&DO for execution of a lease deed with respect to the subject property. It is contended that a lease deed was executed on 27.04.2017 in favour of both the parties with

a share of 50% each. The payments were also made by both the parties as per their share. Mr. Chaudhri further contends that thereafter a joint application was moved by the parties before the Court in the pending suit to take the lease deed on record which was allowed by an order dated 18.08.2017. It is, thus, contended that the filing of this application is on account of a subsequent legal advice received by the appellant and not on account of the fact that the appellant was prevented in any manner in approaching this Court by filing the appeal within the period of limitation.

5. It is also pointed out that the litigation has throughout been pursued by the husband in whose favour the Power of Attorney was executed by the wife. Additionally, the business is being run by her husband and son of the appellant and thus, it cannot be said that the appellant being illiterate was prevented from filing the appeal.
6. We have heard the learned counsel for the parties and carefully considered the submissions made by the learned counsels. It is not in dispute that the preliminary decree was passed in this case on 19.07.2016. It has also not been disputed before us that parties were negotiating for a settlement before the mediation centre. Although the application is silent as to when the mediation proceedings commenced and when the final report was submitted, nor a copy of the report has been filed, but this fact is undisputed that the parties were appearing before the mediator.
7. 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.

8. We find the stand taken by the applicant in the application is not bonafide. The parties, post the passing of the preliminary decree, had worked together in the direction of accepting the preliminary decree, now impugned. This is borne out from the fact that steps were taken together for execution of a lease deed, and the same was executed admittedly on 27.04.2017. At that point of time also, there was no attempt on the part of the appellant to assail the order. Jointly working towards execution of the lease would show acceptance of the order by which a preliminary decree was passed. In furtherance to the grant of the lease deed, parties admittedly moved an application before the High Court, in which an order dated 18.08.2017 was passed taking the original lease deed on record. Even at that point of time, no attempt was made to show any opposition to the passing of the order. Learned counsel for the appellant has relied on the case of *N. Balakrishnan (Supra)*, and the relevant paragraphs relied upon are extracted below:-

*“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as*

*the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*

*10. The reason for such a different stance is thus:*

*The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.*

*11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their*

*remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

*12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality.*

*13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”*

9. There is no quarrel to the proposition sought to be urged by Mr. Pardeep Dhingra counsel for the appellant while relying on **N. Balakrishnan (Supra)**. It is also settled law that it is not the length of delay but the explanation for it, which is to be considered by the Court while deciding an application seeking condonation of delay. It has repeatedly been held that a long delay may be condoned if sufficient and satisfactory explanation is rendered and delay would

not be condoned even for a short period if the application is not *bonafide* or is on account of malice, or carelessness or inaction. The grounds seeking condonation of delay are not borne out from the conduct of the appellant in the present case. The factual aspect which we have narrated above would show that post the passing of the preliminary decree; efforts were being made to convert the property into a lease hold property. A lease deed was executed with 50% share each of both the parties and further, the parties worked towards complying with the order of a preliminary decree, whereas the grounds urged in the application relate to the appellant being an illiterate lady, which would show that the application is not *bona fide*. In case the appellant was aggrieved by the order dated 19.07.2016, surely the appellant would not have taken steps for conversion of the property into lease hold, would not have made joint application with respondent, to the High Court for placing the original lease deed on record. Filing of this appeal is an afterthought. In our view, a right which has accrued in favour of the respondent which cannot be lightly disturbed for the inaction on the part of the appellant.

10. In the case of ***Balvant Singh (Dead) v. Jagdish Singh & Ors***, reported at **2010 (6) SCALE 749**, while deciding an application under Order 22 Rule 9 of CPC and Section 5 of the Limitation Act, it was held as under:

*“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, as 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. The application filed by the applicants lack 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.”*

(Emphasis Supplied)

11. Applying the settled law in the facts of the given case, we find no ground for condonation of delay of 785 days in filing the appeal. The judgment in the case of *Ummer (supra)*, in our view also does not apply to the facts of this case, as therein what weighed with the Apex Court were the facts that the applicant was an old man, he was suffering from Dengue fever, was hospitalised for a long time and also that he was mentally disturbed, which is not the case in the present matter. Also, the case of *State of Rajasthan and Another (Supra)* would also not apply, as in our view, the Apex Court while considering the aspect of delay condoned the delay of six days in filing the appellant which was termed as ‘error occasioned by

*inadvertance*'.

12. Accordingly, for the reasons stated above, all the pending applications alongwith the appeal stand dismissed.

**G. S. SISTANI,J**

**JYOTI SINGH, J**

**JANUARY 18, 2019**

**//PB**

