

\$~7

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

% *Date of Judgement: 29th January, 2019*

+ RFA(OS) 93/2018, C.M.54501-54504/2018

POONAM TALWAR Appellant

Through: Ms.Nisha Narayanan, Advocate

versus

M/S BENNET , COLEMAN & CO LTD & ANR. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

C.M. 54502/2018 (extension of time for filing court fee)

1. Since, the court fee has been filed by the appellant, the application is rendered infructuous.
2. Accordingly, the application is dismissed as having become infructuous.

C.M.54501/2018 (delay)

3. The present application has been filed by the appellant/applicant seeking condonation of delay of 1093 days in filing the present appeal.
4. The necessary facts required to be noticed for disposal of this application are that a suit being CS (OS) 2841/2014 was filed by the respondent herein for recovery of money. The appellant herein is the wife of respondent no.2. The respondent no.2 had taken a loan from

respondent no.1. As the loan amount was not repaid, the respondent no.1 had filed a suit for recovery against respondent no.2. The appellant herein being wife of respondent no.2 was not made a party as she was not privy to the loan transaction. On 20.11.2015, the learned Single Judge while allowing an application under Order XII Rule 6 of the Civil Procedure Code filed by the plaintiff in the suit has passed a judgment on admissions and decreed the suit in favour of the respondent no.1 herein. Aggrieved by the impugned judgment by which the suit was decreed in favour of the plaintiff, the appellant has filed the present appeal.

5. It is submitted by counsel for the appellant that it may be in December, 2017 the respondent no.2 informed his children that the flat in which they were staying would be attached by the Patiala House Court in a case filed against him by his company. The applicant consulted a lawyer, and through her counsel, she learnt that an execution was filed on 09.10.2017. The appellant appeared in the Court on 09.01.2018 and sought time to file reply. The counsel for the applicant filed the objection to the Execution Petition on 08.03.2018.
6. Learned counsel for the appellant submits that the grounds seeking condonation of delay are that the applicant is a school teacher and single handedly taking care of her home and her children. Being a teacher, she was unable to take leave and appear in the Court on each and every date. She used to telephonically enquire from her counsel who informed her that her interests are secure as the objections are yet to be decided. It submitted that in the second week of November, 2018 during Diwali, she met a family friend with whom she shared the details

of the present case. On his advice, she consulted the present counsel on 12th November, 2018. As the applicant did not have a copy of the Execution petition or the objection filed by her, the counsel for the applicant verified the details of the case from the High Court and District Court website.

7. Counsel further contends that the applicant learnt regarding passing of the impugned order under challenge on 09.01.2018 when she appeared before the Execution Court and filed the present appeal within 30 days thereafter. Counsel in these circumstances prays for condonation of delay.
8. We have heard learned counsel for the appellant and also perused the grounds raised in C.M.54501/2018 seeking condonation of delay of 1093 days in filing the present appeal. We have also heard the counsel for the appellant on merits as well.
9. The Supreme Court of India has repeatedly held that the 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.
10. In the case of ***P. K. Ramachandran vs. State of Kerala*** reported at (1997) 7 SCC 556, the Supreme Court of India held that prior to deciding the application seeking condonation of delay, the Court must record its satisfaction that the applicant was prevented by sufficient causes in not approaching the Court within a period of limitation.
11. 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.”*

12. Having regard to the grounds urged in the present applications and the settled law laid down from time to time, we are of the opinion that the appellant has not been able to establish that she was prevented from filing the appeal due to sufficient cause. Thus, no grounds are made out to condone the delay of 1093 days in filing the present appeal. The application for condonation of delay is not bonafide. Accordingly, the application is dismissed.
13. Apart from considering the application seeking condonation of delay in filing the present appeal, we have also considered the appeal on merits and, thus, examined the impugned order dated 20.11.2015 passed by the learned Single Judge in CS (OS) 2841/2014.
14. It may be noted that the appellant was not a party to the suit filed by M/s Bennet Coleman and Company Limited (respondent no.1 herein) against Mr.Anil Talwar (respondent no.2 herein) for recovery of Rs.32,55,267/- along with interest. The appellant herein is the wife of Mr.Anil Talwar. During the pendency of the suit in an application filed

by M/s Bennet Coleman and Company Limited under Order XII Rule 6 of the Code of Civil Procedure, a decree was passed in the sum of Rs.23,60,957/- with interest against Sh.Anil Talwar, the defendant in the suit. It is contended that M/s Bennet Coleman and Company Limited had intentionally not impleaded the appellant herein as a party to the suit. It is further contended that the husband had mortgaged his share of residential flat bearing no.6327, Sector 6 & 7, Vasant Kunj, New Delhi – 110070 in favour of M/s Bennet Coleman and Company Limited. However, the flat is in use and occupation of the appellant and her two children. It is also brought to the notice of the Court that on account of matrimonial discord, the parties are residing separately since January, 2013. It is the submission of learned counsel for the appellant that the suit filed by M/s Bennet Coleman and Company Limited was collusive in nature as the amounts which are shown to be due and payable are factually incorrect. It is contended that only in the month of December, 2017, the husband had informed the children that the flat, which is being occupied by them is likely to be attached by the Patiala House Court in a case filed against him by M/s Bennet Coleman and Company Limited. Thereafter, the appellant has been appearing through her counsel in the Patiala House Court since 09.01.2018 and since she was looking after her two children and also working, she could not take effective steps to file the present appeal.

15. Learned counsel for the appellant has urged before us that the appellant was a proper and necessary party as she has 50 % share of ownership of the flat which was mortgaged by her husband to respondent no.1 herein i.e. M/s Bennet Coleman and Company Limited to secure a housing

loan for the flat in question. This submission is without any force as the respondent no.1 M/s Bennet Coleman and Company Limited had simply filed a suit for recovery against respondent no.2 who had taken a loan from them. Counsel for the appellant is unable to show as to how the appellant would be a necessary party. We also find and as admitted that the appellant has 50% share in the property in question which was mortgaged but the M/s Bennet Coleman and Company Limited has simply filed a suit for recovery. The 50% share of the appellant in the flat was not a subject matter of the suit as we are informed that only a suit for recovery was filed and a decree in the sum of Rs.32,55,267/- has been passed against respondent no.2 herein. Accordingly, the present appeal is dismissed.

16. While we find the appeal to be not maintainable, it would be open for the appellant to raise such objections as may be available to her in the Court where the execution petition is pending.

C.M.Nos. 54503/2018 (leave to appeal) & 54504/2018 (stay)

17. The applications stand dismissed, in view of the order passed in the appeal.

G.S.SISTANI, J

JYOTI SINGH, J

JANUARY 29, 2019/rb