

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

% **Date of decision: 29th November, 2021**

+ **CM(M) 326/2020 & CM No.9541/2020 (for interim relief)**

ATUL AGARWAL

..... Petitioner

Through: Petitioner in person.

Versus

INDIA INFOLINE HOME FINANCE LIMITED Respondent

Through: Mr. Nishant Awana, Mr. G.S. Awana and Mr. Devansh Malhotra, Advocates for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 23rd January, 2020 passed by the Court of Additional District Judge (ADJ), Dwarka Courts, Delhi in Civil Suit No.439/2019, whereby the application for condonation of delay filed on behalf of the respondent/defendant no.2, in respect of filing the memo of appearance, has been allowed subject to costs of Rs.10,000/-.

2. The facts in the present petition are not in dispute and are stated below:

2.1 The suit was filed by the petitioner/plaintiff for recovery in

May 2019 under Order XXXVII of the Code of Civil Procedure, 1908 (CPC).

2.2 The summons were served on the respondent/defendant on 12th June, 2019 and thereafter, dates were fixed in the matter on 20th August, 2019, 19th October, 2019 and 5th December, 2019, when the counsel for the respondent/defendant no.2 appeared but did not file the memo of appearance.

2.3 On 5th December, 2019, the counsel for respondent/defendant no.2 submitted before the ADJ that he would move an application putting appearance of defendant no.2 and seeking condonation of delay in putting the appearance by 6th December, 2019. Though, same was opposed by the petitioner/plaintiff, in the interest of justice, one opportunity was granted by the ADJ.

2.4 Ultimately, the memo of appearance was filed only on 6th December, 2019 after a delay of 167 days.

3. The counsel for the petitioner/plaintiff contends that the no cogent or sufficient reasons have been stated in the application for condonation of delay filed on behalf of the respondent/defendant no.2 and therefore, delay should not have been condoned in the present case. He further submits that whole purpose for filing a summary suit under Order XXXVII of the CPC was defeated if such an ordinate delay is condoned.

4. The counsel for the respondent/defendant no.2 submits that, (i) upon receipt of summons on 12th June, 2019, the counsel was engaged by the respondent/defendant no.2; (ii) the respondent/defendant no.2 through counsel informed the petitioner/plaintiff of his appearance in the matter vide

letter dated 20th June, 2019; (iii) the counsel for the respondent/defendant no.2 was regularly appearing in the suit, however, he did not file the memo of appearance, which is required to be filed in terms of Order XXXVII Rule 2(3) of the CPC; (iv) there is no lapse on behalf of the respondent/defendant no.2; and (v) as per the judgment of this Court in **Babu Lal Yadav Vs. R.S. Yadav & Co. & Anr.** ILR (2010) 4 Del 517, while condoning the delay, the length of delay is not relevant and the explanation offered for the delay has to be seen and in the present case, the words “sufficient cause” should receive liberal meaning.

5. It has been noted in the impugned order that the respondent/defendant no.2 had notified the factum of putting appearance to the petitioner/plaintiff but it was mere inadvertence or negligence of the counsel for respondent/defendant no.2 in not putting the appearance in the Court for which the respondent/defendant no.2 should not be made to suffer.

6. In the same vein, the counsel for the respondent/defendant no.2 has correctly placed reliance upon the judgment of this Court in **Babu Lal Yadav** (supra).

7. Reference may be made to paras 14 and 17 of the aforesaid judgment, which are set out below:

“14. It is trite that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act, 1963 does not prescribe that such a discretion can be exercised by the Court only if the delay is for a certain period of time, rather the length of delay is hardly relevant. What is to be considered is the explanation offered for the delay. Thus each case has to be examined in its own facts and as long as there is a satisfactory explanation offered for the delay, the Court is well within its powers to accept the explanation and condone the delay. Merely

because the title of the application does not reflect the correct position of law, can also not be a ground to oust a party. What has to be examined is the explanation offered in the application and the relief sought. In other words, substantial justice cannot be permitted to be sacrificed at the alter of technicalities. In the case of N. Balakrishnan v. M. Krishnamurthy reported as (1998) 7 SCC 123, the Supreme Court relying on its earlier decisions in the case of Shakuntala Devi Jain v. Kuntal Kumari reported as (1969) 1 SCR 1006 and State of West Bengal v. Administrator, Howrah Municipality reported as (1972) 1 SCC 366, held that the words “sufficient cause” as mentioned in Section 5 of the Limitation Act, 1963 ought to receive a liberal construction so as to advance substantial justice for ‘court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause’. It was further observed that “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 dilatory strategy, the Court must show utmost consideration to the suitor”. It was also observed as under:

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 up 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.”

(emphasis added)

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17. In the present case, no mala fides have been imputed to the respondents, nor has any reason been shown as to why the respondents would not want to contest the suit, in case they were aware of the fact that in the event of their failure to appear within ten days, a decree would be passed against them. It can also not be said that the mistake on the part of the respondents for not entering appearance within ten days, was not bona fide. The explanation offered by the respondents in their application was that they were unaware of the technicalities involved in a summary suit and contacted his counsel only two days prior to the date fixed before the Court. The counsel filed his vakalatnama on the said date. The learned Additional District Judge has accepted the explanation offered by the respondents as ‘sufficient’. The trial court having so exercised its discretion in favour of the respondents, this court is not inclined to disturb such a finding as the exercise of discretion by the trial court has not been assailed on the ground that it is wholly untenable or so adverse or arbitrary that it cannot stand. Rather, a perusal of the impugned order shows that the trial court has duly taken into consideration the fact that no formal application for appearance was filed by the respondents, though the application for seeking condonation of delay was filed and thus, the delay was condoned, subject to payment of costs of Rs. 1,000/-.”

8. The dicta of **Babu Lal Yadav** (supra) is squarely applicable to the facts of the present case. It appears that there was a lapse on the part of the counsel engaged by the respondent/defendant no.2, as despite appearing on

multiple dates, he did not enter appearance as required under Order XXXVII Rule 2(3) of the CPC. Furthermore, no *mala fides* have been imputed to the respondent/defendant no.2, who evidently wanted to contest the suit. The contention of the counsel for the respondent/defendant no.2 of the suit involving triable issues has also been considered by the Trial Court. Furthermore, costs have been imposed on the respondent/defendant no.2 in order to condone the delay. In the opinion of this Court, refusal to condone the delay would result in foreclosing the respondent/defendant no.2 from putting forth its cause, which would cause a grave prejudice to the respondent/defendant no.2 in the suit. Therefore, the Trial Court has rightly applied liberal construction to the cause of delay so as to advance substantial justice and not defeat the rights of the parties.

9. Furthermore, once the Trial Court had examined the present case in its own facts and heard the explanation of the respondent/defendant no.2, the Trial Court was well within its powers to accept the explanation as satisfactory and condone the delay.

10. In view of the aforesaid, there is no reason why this Court should interfere under Article 227 of the Constitution of India with the discretion exercised by the Trial Court.

11. There is no infirmity in the impugned order of the Trial Court condoning the delay in filing the memo of appearance on behalf of the respondent/defendant no.2.

12. Accordingly, the petition is dismissed.

AMIT BANSAL, J.

NOVEMBER 29, 2021/dk