

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

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**Reserved on: 14<sup>th</sup> July, 2021**

**Pronounced on: 12<sup>th</sup> August, 2021**

+ **CM (M) 429/2021**

**BHARAT KALRA**

.....Petitioner

Through: Mr. Jitendra Bakshi, Advocate

Versus

**RAJ KISHAN CHABRA**

.....Respondent

Through: Mr. Shrey Ashat, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE ASHA MENON**

### **J U D G M E N T**

#### **[VIA VIDEO CONFERENCING]**

1. This petition has been filed under Article 227 of the Constitution of India by the petitioner/defendant before the learned Trial Court challenging the order dated 6<sup>th</sup> April, 2021 passed by the Additional District Judge-01, Shahdara District, Karkardooma Courts, Delhi in Civil Suit No.827/2019. The petitioner/defendant has sought setting aside of the impugned order whereby the delay in filing his written statement along with reply to the application under Order XXXIX Rules 1 and 2 the Code of Civil Procedure, 1908 (“CPC”, for short) has not been condoned.

2. The respondent/plaintiff had filed a suit against the petitioner/defendant for declaration, mandatory and permanent injunction, rendition of accounts and damages. The respondent/plaintiff is the sole

owner of the Property No.24, Surya Niketan, Delhi-110092, admeasuring 331 square yards. He claims to have been residing in the said property since 1983. Thereafter, desirous of re-constructing the property into a Multi-storey building, he entered into an agreement with the petitioner/defendant, who presented himself as being engaged in the business of promotion, development and construction of properties. A Collaboration Agreement was executed between the parties on 4<sup>th</sup> December 2017. In accordance with the said agreement, the cost and expenses of raising the construction were to be borne by the petitioner/defendant only. According to the Agreement, the petitioner/defendant and respondent/plaintiff were also to get separate portions of the said property after construction. The respondent/plaintiff had alleged that the petitioner/defendant failed to carry out the construction even after a lapse of 22 months and also failed to make payment of additional sum as per agreed schedule in the Collaboration Agreement.

3. The respondent/plaintiff also claimed that the petitioner/defendant had undertaken to pay the rent of the premises in which the respondent/plaintiff had to shift on account of the demolition of the existing structure, but failed to honor this commitment. In short, these disputes between the parties led to the filing of the instant suit by the respondent/plaintiff seeking injunctions against the petitioner/defendant from interfering with the peaceful and lawful possession of the respondent/plaintiff, in respect of the property No. 24, Surya Niketan, Delhi-110092, with further directions to him to remove all his machinery,

labour and other building equipments from the premises and restraining him from creating any third party interest in the said property. A Decree of Declaration to declare the Collaboration Agreement dated 4<sup>th</sup> December, 2017 as legally terminated on breach by the petitioner/defendant and that the petitioner/defendant had no right, title or interest in the said property was also sought. Monetary claims of Rs.24,50,000/- towards rent for the period from 15<sup>th</sup> December, 2017 to November, 2019, Rs.4,00,000/- as penalty for non-completion of the construction of the Multi-storey building on the suit property by 6<sup>th</sup> July, 2019, Rs.25,00,000/- towards damages for hardship, harassment, mental agony caused to the respondent/plaintiff by the petitioner/defendant, along with interest, were also made.

4. Summons of the suit and the application were served upon the petitioner/defendant on 11<sup>th</sup> January, 2020. There is no dispute with regard to this fact. However, the written statement was not filed until 20<sup>th</sup> August, 2020. An application was filed by the petitioner/defendant under Order VIII Rule 1 CPC seeking condonation of delay in filing the written statement and reply to application under Order XXXIX Rules 1 & 2 CPC. This was opposed by the respondent/plaintiff. The learned Trial Court vide the impugned order dated 6<sup>th</sup> April, 2021 dismissed the said application on the ground that there was “no plausible explanation and coherent reason” explaining the delay in filing the written statement and reply to application under Order XXXIX Rules 1 & 2 CPC.

5. Mr. Jitender Bakshi, learned counsel for the petitioner/defendant submitted that owing to the lockdown and the difficulties being faced by

the counsel in filing cases across the country, the Supreme Court vide orders dated 23<sup>rd</sup> March, 2020 had, in *Suo Motu* Writ Petition (Civil) No(s).3/2020 in ***Re: Cognizance for Extension of Limitation***, directed that the period of limitation shall stand extended w.e.f. 15<sup>th</sup> March, 2020 till further orders in that petition. Vide order dated 8<sup>th</sup> March, 2021, the *suo moto* proceedings were disposed of directing that in computing the period of limitation, the period from 15<sup>th</sup> March, 2020 till 14<sup>th</sup> March, 2021 shall stand excluded.

6. It was argued by learned counsel for the petitioner/defendant that even under Order VIII Rule 1 CPC, the Court had the powers to condone the delay in filing the written statement up to a period of 120 days from the date of service of summons. This period of 120 days would have ended on 10<sup>th</sup> May, 2020 by which time, a complete lockdown had been enforced. Learned counsel for the petitioner has also relied on the order of this court in ***Vinod Kumar Kad v. Girish Kumar Kad*** [Order dated 3<sup>rd</sup> November, 2020 in CS(OS) 636/2019] to submit that even the High Court has been condoning delay in filing written statements taking into account the extra-ordinary situation on account of the Covid-19 pandemic. Hence, it was prayed that the impugned order be set aside and the written statement to the suit and reply to the application under Order XXXIX Rules 1 & 2 CPC be taken on record.

7. Mr. Shrey Ashat, learned counsel for the respondent/plaintiff submitted that there was no error in the impugned order and the court could not re-appreciate facts in exercise of its powers under Article 227 of the Constitution of India. It was further submitted that the application

filed by the petitioner/defendant for condonation of delay in filing the written statement to the suit and reply to the application contained only bald averments that the delay was on account of the counsel or the clerk who had misplaced the file as no affidavit of the clerk or counsel had been filed. Further, there was no explanation as to why, despite the recovery of the files on 14<sup>th</sup> March, 2020, the written statement was not filed till 20<sup>th</sup> August, 2020, even though the lockdown had been eased and filing permitted by June, 2020. It was also submitted that the learned Trial Court had rightly concluded that there was no explanation and that there was lack of *bona fides* in filing the application. He thus, prayed that the petition be dismissed.

8. The application under Order VIII Rule 1 CPC placed on this record as Annexure 5, states that after much effort, the file containing all relevant documents could be located on 14<sup>th</sup> March, 2020. Not a word has been mentioned as to why, thereafter, no action was taken on behalf of the petitioner/defendant to file the written statement and reply. The lockdown in Delhi was enforced w.e.f. 23<sup>rd</sup> March, 2020 whereas, the nationwide lockdown was announced with effect from w.e.f. 25<sup>th</sup> March, 2020, which was extended from time to time. The District Courts started functioning in May, 2020 in a limited fashion, physically and through video conferencing. The lockdown was lifted w.e.f. 1<sup>st</sup> June, 2020.

9. A mere claim that further delay in filing the written statement and reply was caused due to Covid-19 induced circumstances, as the working of the office of the counsel for the petitioner/defendant could normalize only by the middle of August, 2020, offers no explanation for the delay

occurring prior to the lockdown and during the partial opening of the courts. Neither does it explain the delay from 1<sup>st</sup> June, 2020 to 20<sup>th</sup> August, 2020. As rightly pointed out by learned counsel for the respondent/plaintiff, in support of the application only the affidavit of the petitioner/defendant has been filed, who could not have verified the truth of the plea taken of disruption in the office of the counsel. As held in ***Vijay Gopal Jindal v. Srei Infrastructure Finance Limited***, 2009 SCC OnLine Del 3932 and ***Ranbir v. Slokya College of Nursing***, 2014 SCC Online Del 4338, this plea appears to be one of “convenience”, in an effort to take the benefit of the extension of limitation period on account of Covid-19.

10. In ***Re: Cognizance for Extension of Limitation (supra)***, the Supreme Court had taken *suo motu* cognizance of the situation arising on account of the Covid-19 pandemic and the difficulties faced by the litigants across the country. Thus, on 23<sup>rd</sup> March 2020, it was directed that the period of limitation in filing the petitions/applications/suits/appeals/all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended w.e.f. 15<sup>th</sup> March, 2020 till further orders. On 8<sup>th</sup> March, 2021, the *suo motu* proceedings were disposed of directing that in the computation of the period of limitation for any suit, appeal, application or proceeding, the period from 15<sup>th</sup> March, 2020 till 14<sup>th</sup> March, 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15<sup>th</sup> March 2020, if any, would become available with effect from 15<sup>th</sup> March, 2021. In the event, the period of limitation had expired between 15<sup>th</sup>

March, 2020 and 14<sup>th</sup> March, 2021, a further period of 90 days was granted for taking necessary steps.

11. Vide orders dated 27<sup>th</sup> April, 2021, in view of the second surge in Covid-19 cases, the Supreme Court restored the order dated 23<sup>rd</sup> March, 2020 directing that the period of limitation as prescribed under any general or special laws in respect of judicial or quasi judicial proceedings whether condonable or not, shall stand extended till further orders. The period from 14<sup>th</sup> March, 2021 till further orders, was also directed to be excluded from computation of the prescribed period of limitation under various laws. The learned counsel for the petitioner/defendant is seeking benefit of these directions.

12. The learned counsel for the petitioner/defendant has also relied upon *SS Group Pvt. Ltd. v. Aaditiya J. Garg*, 2020 SCC OnLine SC 1050 to submit that subsequently, the Supreme Court itself has condoned the delay in filing replies before the National Consumer Disputes Redressal Commission (NCDRC). Reliance has also been placed on the judgment of this court in *Vinod Kumar Kad (supra)*, whereby in an order under Order VIII Rule 1 CPC, observing that as the ninety days of the limitation period had expired during the Covid-19 lockdown, the delay was condoned.

13. While it is true that the power to condone delay is intended to advance substantive justice, nevertheless, procedure cannot be given a complete go by. The powers of the court to condone delay is to be used in appropriate cases. No litigant can assume that, as a matter of right, the delay in taking steps would be condoned, because procedure is the

handmaiden of substantive justice. Rights accruing to the opposite party on account of the delayed action need to be also kept in mind. The reasons given for explaining the delay are of paramount importance and not the length of the delay. The shortness of delay alone ought not to suffice for exercise of discretion to condone it. Cogent and clear explanations have led the courts to condone the delay, even of five years in filing the pleadings.

14. In the present case, as noticed above, there is no explanation for the inaction of the petitioner/defendant from 14<sup>th</sup> March, 2020 till the actual date of filing of the written statement and the reply on 20<sup>th</sup> August, 2020. Had there been cogent reasons, the entire period, and not merely 120 days, could have been condoned. The Supreme Court in ***Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd.***, (2021) 2 SCC 317 was dealing with a case in which the National Company Law Appellate Tribunal (NCLAT) had dismissed the application for condonation of delay. Vide order dated 18<sup>th</sup> September, 2020, the Supreme Court while referring to its orders dated 23<sup>rd</sup> March, 2020 in the *sou motu* writ petition, held as follows: -

*“17. But we do not think that the appellants can take refuge under the above order in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10: 2020 SCC OnLine SC 343]. What was extended by the above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10: 2020 SCC OnLine SC 343] of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order [Cognizance for Extension of Limitation,*

*In re, (2020) 19 SCC 10: 2020 SCC OnLine SC 343]*  
*passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”*  
**(Emphasis added)**

15. It was thus made clear that the benefit of the order dated 23<sup>rd</sup> March, 2020 would be available only to those who were vigilant of their rights and not lethargic. There is also nothing in the orders of the Supreme Court that suggests that when an action has not been taken within the prescribed period of limitation, the merits of the application for condonation of delay need not be looked into and the same is to be allowed automatically. Only where the limitation has expired during the lockdown and even the extended period, which can be allowed in the discretion of the court, also expired in the lockdown period, a party can claim that no delay has occurred as the Supreme Court had enlarged limitation periods prescribed.

16. In the present case, there was no lockdown from 1<sup>st</sup> June, 2020. What expired during the lockdown was not the limitation to file the written statement. On being served on 11<sup>th</sup> January, 2020, the petitioner/defendant had to file the written statement by 10<sup>th</sup> February, 2020. On 14<sup>th</sup> March, 2020, when the misplaced file and documents were supposedly found, a further period of 33 days had already expired. By

23<sup>rd</sup>/25<sup>th</sup> March, 2020, when the lockdown in Delhi/nationwide lockdown was announced, a total of 72/74 days had already expired. Second proviso to Order VIII Rule 1 CPC vests the court with discretion to condone delay in filing the written statement provided a total time period of 120 days from the date of service of summons had not elapsed. It is in this context that the petitioner/defendant was required to explain why he did not file the written statement immediately in June, 2020 and waited for a further period of almost three months to file the written statement. It would have been probably different had the first 30 days of limitation being available when the lockdown was enforced, as in that event, without a doubt, the limitation would have been enlarged in terms of the directions of the Supreme Court.

17. Following the judgment of the Supreme Court in *Sagufa Ahmed (supra)*, and particularly in the absence of any cogent explanation forthcoming for the inaction of the petitioner/defendant, till 20<sup>th</sup> August 2020, the learned Trial Court rightly dismissed the application under Order VIII Rule 1 CPC. There is no perversity in the impugned orders and hence no ground is made out to interfere with the same.

18. The petition is accordingly dismissed.

19. The judgment be uploaded on the website forthwith.

**(ASHA MENON)**  
**JUDGE**

**AUGUST 12, 2021**  
**pkb/s**