

FAO-COM No.11 of 2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-COM No.11 of 2022 (O&M)

Date of decision : 06.05.2022

M/s Durga Softelecom Pvt. Ltd.

.....Appellant

VERSUS

M/s Aricent Technologies (Holdings) Ltd.

....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Randeep Singh Surjewala, Advocate and
Mr. R. Kartikeya, Advocate, for the appellant.

AUGUSTINE GEORGE MASIH, J.

**CM-33-FAOCOM-2022 &
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Prayer in this application (CM-34-FAOCOM-2022) under Section 5 read with Section 14 of the Limitation Act, 1963 is for condonation of delay of 1765 days in filing the appeal. In the main appeal which has been preferred, challenge is to the order dated 27.05.2016 passed by the Civil Judge (Senior Division), Gurugram, whereby the prayer for interim injunction was partly allowed and to the order dated 17.03.2017 passed by the same Court dismissing the application preferred for review of the above order on the ground of delay as well as merits.

2. The explanation put forth by the applicant for the delay is that after passing of the above referred to impugned orders, Director of the applicant company consulted its legal department and sought opinion of the counsel. For the said purpose, the entire record was collected from the

counsel representing the applicant – appellant before the Commercial Court at Gurugram to be handed-over to the counsel at Chandigarh. As one of the Directors of the company is resident of London, United Kingdom, some time was taken for vetting of the grounds. As per the advise given by the counsel, revisional jurisdiction of this Court was invoked by filing Civil Revision No.8419 of 2017, which was disposed of by this Court on 15.03.2022 by relegating the applicant to the alternative remedy of filing an appeal in accordance with Order XLIII Rule 1 (r) of CPC read with Section 13 of the Commercial Courts Act, 2015. Applicant was also given liberty to file an application under Section 14 of the Limitation Act, 1963, for seeking the exclusion of the time spent in the Court for the purpose of calculating the limitation. It is asserted that thereafter, the present appeal has been filed leading to delay of 1765 days in filing the same which may be condoned in the light of the above.

3. Learned counsel for the applicant – appellant has with force contended that because of the wrong advise given by the counsel, the applicant – appellant should not be made to suffer. The delay in filing the present appeal having been explained, the same needs to be condoned and the appeal entertained on merits.

4. When confronted by this Court with regard to the period excluding the actual period spent by the applicant in pursuing its revision petition in this Court, learned counsel for the applicant – appellant has very fairly stated that there is a delay of 169 days in filing the appeal by excluding the said period. A perusal of the application preferred under Section 5 read with Section 14 of the Limitation Act, 1963 would show that

there is no explanation whatsoever with regard to this period of 169 days.

5. To this, learned counsel for the applicant has responded to by placing reliance upon the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh and another Vs. Bhailal Bhai** AIR 1964 SC 1006 to contend that there is no limitation as such provided to the High Court to exercise its power under Article 226 of the Constitution of India. Assuming it to be reasonable, as has considered by the Hon'ble Supreme Court, the same was said to be three years period as is the limitation prescribed for the civil action for a remedy under the Limitation Act, 1963. Reliance has also been placed upon the order dated 04.07.2014 passed by the learned Single Judge of this Court in CR No.4279 of 2014, titled as 'State of Haryana and another Vs. Ajay Sharma', where, while exercising the revisional jurisdiction under Article 227 of the Constitution of India, the Court has said that although there is no limitation prescribed for the same but as a matter of policy, the order under challenge should have been questioned within a reasonable period which should be at the most six months, if not 90 days. On this basis, learned counsel for the applicant – appellant has sought to submit that the delay in filing the appeal may be condoned.

6. This contention of the learned counsel for the applicant – appellant cannot be accepted as for preferring an appeal, a period has been prescribed under the statute which is meant to be followed. In case there is a delay, the Limitation Act provides for explanation to be submitted, which should be justifiable and reasonable. In the present case, unfortunately there is no reason whatsoever given for the delay in approaching the Court by

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way of the present appeal even by excluding the period which the applicant – appellant has exhausted from the date of filing of the revision petition in this Court till the date of its disposal. The said period when calculated has been conceded by the counsel for the applicant – appellant to be 169 days. In the absence of any explanation qua this period of 169 days, the prayer for condoning the delay in filing the appeal cannot be accepted especially when it is by now settled that each day's delay has to be explained. Not only is the explanation required to be there but it has to be just and reasonable. In the present case, the same is missing.

7. In the light of the above, we do not find any ground or reason to accept the prayer made in this application for condonation of delay in filing the appeal and therefore, dismiss this application for condonation of delay. Consequently, the main appeal stands dismissed.

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In the light of the above order passed by this Court in the application for condonation of delay (CM-33-FAOCOM-2022), no orders are required to be passed in these applications as the same have been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

06.05.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No