



WEB COPY



C.M.P. No. 6550 of 2022

in

S.A.SR. No. 92935 of 2021

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present application has been filed to condone the delay of 631 days in filing the second appeal.

2. Admittedly, the award in CMA(LA) No. 68 of 2004 was passed on 16.10.2019 and the copy of the order was made ready on 28.01.2020 and the order copy was delivered on 06.02.2020. Thereafter, from the last week of March, 2020, to be precise, from 23.03.2020, lockdown was imposed owing to covid-19 and it continued for 2 years.

3. In the present case on hand, the appeal has been preferred on 23.03.2020. For the purpose of calculating the delay, the period during which there was covid needs to be included and while taking into account



the delay for the purpose of limitation, the period during which there was lockdown, more so, in the light of the judgment of the the Apex Court reported in (2022) 3 SCC 117 (***Cognizance for Extension of Limitation, In Re***) needs to be excluded. If this period is excluded, then the appeal has been filed with two months delay.

4. Besides, the respondent has also preferred an appeal against the very same order after a delay of 5 years and the same is pending. It has been brought to our attention by the learned counsel for the respondent that the Hon'ble Apex Court, in the decision rendered in ***Postmaster General and Others V. Living Media India Limited and another*** reported in (2012) 3 SCC 563 has held as follows:

“29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government



departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

The Supreme Court, in yet another case, in **N. Balakrishnan V.**

M. Krishnamurthy reported in **(1998) 7 SCC 124** has held that,

“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 want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory.....”



This has been followed by the Division Bench of this Court in the case of **M/s.Ruskim Sea Foods Limited vs. M/s.Evergreen Sea Foods Pvt. Ltd.,** reported in **MANU/TN/0876/2018** in which one of us (SVNJ) was a party and it has been held as follows:

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.”

5. We find that the 1st respondent cannot apply two different yardsticks when they have approached the Court after a delay of 5 years seeking enhancement while the delay on the part of the petitioners herein is for a few months, after excluding the period during which there was



lockdown. Hence, we find force in the contention of the petitioners.

Accordingly, the delay is condoned and the petition is ordered as prayed for.

nv

(S.V.N.J.) (R.K.M.J.)
15.03.2023



WEB COPY



S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

nv

C.M.P. No. 6550 of 2022
in
S.A.SR. No. 92935 of 2021

15.03.2023