

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RFA-COM No.3 of 2023 (O&M)

Date of Decision:11.04.2023

Bellevue Central Park-II Condominium Association

..... Appellant

V/s.

M/s. Crystalltown Hospitality Services Private Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajeshwar, Advocate and
Mr. Viren Jain, Advocate for the appellant.

Harpreet Singh Brar, J.

CM-14-RFCOM-2023

1. Prayer in this application is for placing on record the supplementary affidavit alongwith Annexures A-10 to A-16.
2. Prayer is granted and Annexures A-10 to A-16 are taken on record, subject to all, just exceptions.

CM-7-RFCOM-2023 in/ and RFA-COM No.3 of 2023

3. The appellant, a Resident Welfare Association registered under the Haryana Registration and Regulation of Societies Act, 2012, has filed the present appeal under Section 13 (1-A) of the Commercial Courts Act, 2015 against the judgment and decree dated 26.02.2021 passed by the Court of Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram in Civil Suit bearing No.174 dated 21.12.2018, titled as “M/s.

Crystalltown Hospitality Services Private Limited (earlier known as Central Park Hospitality Services Pvt. Ltd.) Vs. Bellevue Central Park-II Condominium Association”; whereby the said suit has been decreed for recovery of an amount of Rs.1,12,94,851/- which includes principal sum of Rs.98,28,463/- and interest of Rs.14,66,388/- @18 per cent per annum till 6.10.2018 and an additional interest @ 6 per cent per annum from 7.10.2018 till actual realization.

FACTUAL BACKGROUND

4. The respondent-Company and the appellant-Association had entered into a Facility Management Services Agreement on 22.03.2017 whereby, the respondent was to provide services to the appellant-Association for carrying out the operations and maintenance of the common area for a period of 5 years. The payable fee with regard to maintenance charges were settled and it was agreed that the respondent would raise invoices for the maintenance charges every month and the appellant-Association would pay the dues by 15th of the first calendar month of the succeeding quarter. The cost in the nature of the capital expenditure for installation, maintenance and replacement of the equipments, machinery and repair would be borne by the appellant-Association. On the basis of incurring capital expenditure on purchase of DG sets and other machinery, the respondent raised the demand of the amount incurred on the above items and on the refusal by the appellant, the respondent had filed suit No.174 dated 21.12.2018 for the recovery of Rs.1,12,94,851 before the learned Additional District Judge (Commercial Court) at Gurugram. The suit filed by the respondent was decreed vide

judgment and decree dated 26.02.2021 by the learned Additional District Judge (Commercial Court), Gurugram.

5. The appellant has filed the present appeal on 16.02.2023 in this Court challenging the above mentioned judgment and decree dated 26.02.2021 alongwith an application under Section 5 of the Limitation Act, 1963 (for brevity 'the Limitation Act') to condone the delay of 292 days in the filing of the appeal. On 17.2.2023, the learned counsel for the applicant-appellant sought time to file supplementary affidavit to explain the inordinate delay in filing the present appeal. On 01.04.2023, the supplementary affidavit explaining the delay was filed alongwith Annexures A-10 to A-16.

ISSUE

6. After having heard the learned counsel for the appellant at length and carefully examining the supplementary affidavit dated 01.04.2023, explaining the reasons for condonation of delay, the following issue arises for adjudication by this Court:

Whether the appellant is able to show sufficient cause for the condonation of delay or the appellant had not acted with reasonable diligence in prosecuting the appeal within the period of limitation?

CONTENTIONS

7. Learned counsel for the appellant has asserted that the developers while undertaking the construction had created rifts and divides amongst the inhabitants of the colony. Inasmuch as that the developer had developed Phase-II of the group housing colony by the name of Belgravia and mischievously got another Resident Welfare Association set up for managing the Belgravia phase of the group housing colony, which is totally illegal.

Further divides were created by the developer in the common areas of the Bellevue and Belgravia phases. Several other proxy Resident Welfare Associations were also got set up by the developer to create overlap in the management of the colony and to create rifts and divides with an oblique motive of getting its own sister concerns to dominate the maintenance of the colony and to satisfy its own vested interests of earning commercial gain from the activities relating to the maintenance etc. of the colony which resulted in unwarranted hostilities among the apartment owners and the developer which led to litigation between the parties. A writ petition bearing CWP No.15745 of 2018 was filed in this Court. He further submitted that the developer had gotten as many as five other Resident Welfare Associations created, the details of the same is mentioned below:

Date	Name	Registration
11.12.2006	Welfare Association of aggrieved Residence of Central Park	DR/GGN/124
22.04.2010	Bellevue Central Park – 2 Condominium Association	DR/GGN/344
17.12.2010	Central Park -2 Resident Welfare Association	DR/GGN/449
21.02.2014	Bellevue Central Park – 2 Condominium Association	DR/GGN/122
05.05.2015	Central Park – II Condominium Association	DR/GGN/173
14.06.2016	Belgravia Residents (Central Park-II) Welfare Association	DR/GGN/026
30.08.2016	Central Park-II Resorts Tower A-P Owners Association	DR/GGN/026
01.12.2016	The Room Central Park-II Condominium Association	DR/GGN/028
02.08.2018	Central Park Belgravia Welfare Society	DR/GGN/033

8. Thereafter, the appellant-Association was dissolved on 12.08.2017 and the new governing body was elected on 25.03.2018, a copy of

the elected office-bearers issued by the Returning Officer under the Haryana Registration and Regulation of Societies Act, 2012 is annexed as Annexure A-10. The learned counsel for the appellant further referred to the copy of resignation letters of some office bearers dated 15.05.2018, 06.07.2018, 07.05.2020, 23.05.2020 which are appended as Annexure A-11 collectively. Subsequently, the present governing body was elected on 06.09.2020, whose copy of approval dated 11.11.2020 issued by the concerned Registrar is appended as Annexure A-12. It was vigorously put forth by the learned counsel for the appellant that the previous office-bearers of the Society have never brought to the notice of the present governing body regarding the pendency of the civil suit filed by the respondent and the present governing body took over the management of the appellant-Association in a state of complete chaos. Finally, as specifically stated in para 17 of the supplementary affidavit that in March, 2021, office-bearers of the appellant-Association were contacted by the respondent-Company and the filing of the civil suit and its decision on 26.02.2021 was brought to their notice. The appellant has further tried to explain the delay by indicating that efforts were made to resolve the issue amicably with the respondent-Company and that they have even cleared their pending dues vis. maintenance and service charges on 31.03.2021. The reliance is further placed upon Annexure A-15 wherein the Hon'ble Supreme Court has extended the period of limitation from 15.03.2020 till 28.02.2022 in view of the COVID-19 pandemic.

OBSERVATIONS AND ANALYSIS

9. Learned counsel for the appellant has relied upon the following decisions of the Hon’ble Supreme Court to seek the condonation of delay in filing the appeal:

1.	Dr. Yashwantrao Bhaskarrao Deshmukh Vs. Raghunath Kisan Saindane (SC) 2021(4) RCR (Civil) 556
2.	State of Haryana Vs. Chandra Mani, (SC) 1996(3) SCC 132
3.	State (NCT of Delhi) Vs. Ahmed Jan, (SC) 2008 (4) RCR (Criminal) 119
4.	N. Mohan Vs. R. Madhu (SC) 2020 (1) RCR (Civil) 384
5.	Robin Thapa Vs. Rohit Dora (SC) 2019 (5) RCR (Civil) 502
6.	Zillion Infraprojets Pvt. Ltd Vs. Bharat Heavy Electricals Ltd Ap 312 of 2021 Date of decision:29.03.2023.

10. Now, the question before us is whether the appellant has been able to furnish a proper explanation which is acceptable and which would amount to ‘sufficient cause’ for exercising the discretion under Section 5 of the Limitation Act to condone the delay of 292 days in filing the appeal.

11. The appellant has placed reliance upon **Dr. Yashwantrao Bhaskarrao Deshmukh** (*supra*). There is no quarrel about the proposition of law governing the discretion for the condonation of delay in the above referred judgment. The only embargo put by the Hon’ble Supreme Court for condonation of delay is that without any enquiry and without arriving at a finding disbelieving the explanation of the appellant, the Court should not reject the application for delay. But when we examined the explanation and

the reasons given by the appellant in the supplementary affidavit dated 01.04.2023 to test the sufficiency of the reasonable and acceptable explanation for arriving at a conclusion that the appellant has been able to show 'sufficient cause' for condonation of delay, it is palpably clear that the cumulative sequence of events emanating from the affidavit refers to the events prior to the passing of the judgment and decree on 26.02.2021. The present governing body of the appellant-Association was elected on 06.09.2020 and in March, 2021, as indicated in para 17 of the affidavit, the appellant-Association learned about the passing of the judgment and decree dated 26.2.2021. There is no explanation as to what *bona fide* efforts were made to file the appeal after gaining knowledge about the passing of the judgment and decree dated 26.02.2021 and it was only on receipt of summons issued by the Executing Court on 20.01.2023 that, the appellant-Association became active to file the present appeal. The reliance of the appellant-Association on the directions of the Hon'ble Supreme Court in extending the period of limitation from 15.03.2020 till 28.02.2022, is totally misconceived as the appellant-Association has filed the present appeal on 16.02.2023 for which no explanation is forthcoming which this Court would find reasonable and acceptable for condoning the delay.

12. The facts and circumstances of the case clearly indicates that the appellant has miserably failed to furnish any acceptable and cogent reasons sufficient to condone the delay of 292 days in filing the appeal. The explanation given on the supplementary affidavit dated 01.04.2023 lacks *bona fide*. The inability to reach consensus among the members of the appellant-Association is not a sufficient ground for condoning the delay. It is settled

position of law that for condonation of delay, it should receive a liberal construction to advance substantial justice but in the case in hand, the appellant-Association has failed to show 'sufficient cause' and what steps were taken after the appellant-Association when it came to know about the passing of the judgment and decree dated 26.02.2021. Nothing is discernable from the record with regard to the material and particulars of getting a copy of the judgment and decree dated 26.2.2021 and what steps were taken thereafter for filing an appeal within a reasonable time. This Court cannot accept such a casual approach of the appellant in filing the present appeal. The appellant has been lethargic and indolent in filing the appeal and this Court cannot condone the gross negligence and deliberate inaction on the part of the appellant even after being liberal, as law permits.

13. The appellant has further relied upon **State of Haryana Vs. Chandra Mani** (*supra*) and **State (NCT of Delhi) Vs. Ahmed Jaan** (*supra*).

In both the cases, the facts are clearly distinguishable as the delay by the State was condoned in the above referred decisions observing that certain amount of latitude within reasonable limit is permissible in the background of impersonal bureaucratic set up involving a procedural red tape. The Hon'ble Supreme Court in **Office of Chief Post Master General and Others Vs. Living Media India Limited and Another**, 2012 AIR SC (Civil) 1109 has considered the judgment of **Chandra Mani** (*supra*) and other pronouncements on the principle of condonation of delay and dismissed the appeal on the ground of delay by holding that in the absence of plausible and acceptable explanation, the delay is not be condoned mechanically. Similarly, in **Collector Central Excise, Madras Vs. A.Md. Bilal and Company** (1999)

108 ELT 331, the Hon'ble Supreme Court refused to condone the delay of 502 days in filing the appeal in the absence of satisfactory and reasonable explanation for condonation of delay.

14. The Hon'ble Supreme Court has further articulated the relevant factors which enable the Court to exercise the judicial discretion to condone the delay in a two Judge Bench in **Balwant Singh (Dead) Vs. Jagdish Singh, 2010 AIR (Supreme Court) 3043**, speaking through Justice Swatanter Kumar, as under:

“15. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom (supra). In this case, the Court after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, Civil Procedure Code alongwith an application under Section 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under:-

13 (i) The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal

abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal. We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of Katari Suryanarayan (supra).

16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to

inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

17. On an analysis of the above principles, we now revert to the merits of the application in hand. As already noticed, except for a vague averment that the legal representatives were not aware of the pendency of the appeal before this Court, there is no other justifiable reason stated in the one page application. We have already held that the application does not contain correct and true facts. Thus, want of bona fides is imputable to the applicant. There is no reason or sufficient cause shown as to what steps were taken during this period and why immediate steps were not taken by the applicant, even after they admittedly came to know of the pendency of the appeal before this Court. It is the abnormal conduct on the part of the applicants, particularly Har-Inder Singh, who had appeared as AW4 in the trial and was fully aware of the proceedings but still did not inform the counsel of the death of his father. The cumulative effect of all these circumstances is that the applicants have miserably failed in showing any 'sufficient cause' for condonation of delay of 778 days in filing the application in question."

15. A two Judge Bench of the Hon'ble Supreme Court in **Basawaraj and Another Vs. Special Land Acquisition Officer, 2013 (14) SCC 81**, speaking through Justice Dr.B.S. Chauhan, has laid down the ratio that the Courts have no power to extend the period of limitation on ground of equity and the consequences flowing from the statutory provisions are never an evil, and the following was observed:

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 24, p. 181:

"330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely,(1) that long dormant claims have more of cruelty than justice in them,(2) that a defendant might have lost the evidence to disprove a stale claim, and(3) that persons with good causes of actions should pursue them with reasonable diligence".

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

14. In **P. Ramachandra Rao v. State of Karnataka, 2002(2) RCR (Criminal) 553**, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in **A. R. Antulay v. R.S. Nayak, 1992(2) RCR (Criminal) 634**.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

16. Similarly, in **State of Kerala Vs. E.K. Kuriyipe and others, (1981) Supp. SCC 72**, the Hon'ble Supreme Court has held that whether or not there is a sufficient cause for condonation of delay is a question of fact depending upon the facts and circumstances of each case.

CONCLUSION

17. In view of the above discussion, we find it was obligatory upon the appellant to have shown sufficient cause which prevented it from filing the present appeal within the period of limitation. The availability of the sufficient cause on the record is a condition precedent for exercising the discretionary jurisdiction vested in the Court by Section 5 of the Limitation Act and such discretion cannot be exercised mechanically. Sufficient cause is the only criterion to arrive at a conclusion whether the party seeking the condonation of delay is justified in doing so. Unless a satisfactory explanation is offered, the Court should not use the discretion vested in it by Section 5 of the Limitation Act to condone the delay. Such discretion has to be exercised judicially on examining the facts and circumstances of each case.

18. The facts and circumstance of the case in hand do not call for condonation of delay. The appellant has failed to show the 'sufficient cause' for condonation of delay of 292 days in filing the appeal. Accordingly, the appeal is dismissed on the ground of delay. There shall be no orders as to costs.

CM-8-RFCOM-2023

19. In view of the disposal of the main case, no order is required to be passed in the present application and the same stands disposed of, as infructuous.

(Augustine George Masih)
JUDGE

(Harpreet Singh Brar)
JUDGE

11th April, 2023

Sonia Puri

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No