



2023:DHC:7861



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

% **Date of order :11th October, 2023**

+ **C.R.P. 291/2023 & CM APPL. 52986/2023**

NAGENDRA MOHANDASS Petitioner

Through: **Mr.Siddhartha Iyer, Advocate.**

versus

ARCHANA DASS & ANR. Respondents

Through: **Mr.Rahul Sharma, Mr.Shrey Gupta
and Mr.Lokesh Chopra, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRADHARISINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL No. 52985/2023(Condonation of delay)

1. The instant application under Section 5 of the Limitation Act, 1963, (hereinafter “the Act”), read with Section 151 of the Code of Civil Procedure, 1908, (hereinafter “CPC”), has been filed on behalf of the petitioner/applicant seeking condonation of delay of 870 days in filing the accompanying civil revision petition.

2. The captioned civil revision petition has been filed under Section 115 of the CPC, challenging the impugned order dated 24th March 2021, passed by the learned ADJ—III, South East District, Saket Courts, New Delhi, in civil suit bearing CS DJ No. 918/2019. The said civil suit was filed by the respondent, i.e., the plaintiff before the learned Trial Court seeking partition of the property bearing no. Pocket K-12, Ground Floor, Chittaranjan Park, South Delhi, Delhi-110019 (hereinafter “Suit Property”).

3. Learned counsel appearing on behalf of the petitioner submitted that by way of the impugned order dated 24th March 2021, the learned Trial Court



2023:DHC:7861



erroneously granted permission to the respondent to withdraw her civil suit bearing CS DJ No. 918/2019, with the liberty to file a fresh suit.

4. It is submitted that pursuant to the liberty granted to the respondent to institute a fresh civil suit, the respondent filed a civil suit bearing CS DJ No. 131/2022, before the learned Trial Court seeking possession of the suit property.

5. It is submitted that by way of the captioned civil revision petition, the petitioner is seeking revision of the impugned order since the same suffers from illegality as the learned Trial Court failed to exercise its jurisdiction in accordance to the law.

6. It is submitted that unfortunately, due to the manner in which the events unfolded, the present petition suffers from considerable delay. It is submitted that neither the petitioner, nor his counsel was present before the learned Trial Court on 24th March 2021, which is one of the grounds of challenging the impugned order, and were therefore, unaware about the order that was passed by the learned Trial Court.

7. It is submitted that the impugned order was passed during the period of COVID-19 pandemic. The petitioner learnt about the order during the said period and due to the said reason, he could not approach this Court in time.

8. It is submitted that, in any case, for the computation of limitation period the entire period stands excluded until 1st March 2022, in pursuance to the directions passed by the Hon'ble Supreme Court. It is, therefore, submitted that the actual delay is only of 245 days, if the time due to COVID-19, is excluded.

9. It is submitted that the petitioner was of the *bonafide* belief, that the civil suit was withdrawn due to the fact that the parties wished to complete a



2023:DHC:7861



sale transaction, and were willing to abide by the oral partition and family settlement of the joint family properties including the suit property.

10. It is submitted that, unfortunately, to the utter shock of the petitioner, the respondent filed a civil suit bearing CS DJ No. 131/2022, before the learned Trial Court, claiming her ownership and possession over the suit property.

11. It is submitted that at this juncture, the petitioner realized the implications of the withdrawal order, i.e., the impugned order, which was being abused by the respondent to bypass the requirements of Order VI Rule 17 of the CPC, in a circuitous fashion using Order XXIII Rule 1 (3) of the CPC.

12. It is submitted that thereafter, the petitioner filed an application under Order VII Rule 11 of the CPC, for rejection of the civil suit bearing CS DJ No. 131/2022, but to no avail, the said application was dismissed vide order dated 25th July 2023. It is further submitted that, therefore, the time period spent in pursuing the above said application, also deserves to be excluded for the purpose of computation of limitation.

13. In view of the foregoing submissions, it is submitted that the instant application may be allowed and the delay be condoned.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant application and submitted that the same is liable to be dismissed being devoid of any merit.

15. It is submitted that the instant application is merely an abuse of process of law which has been filed with the sole purpose of harassing the respondent and with the intent to derail the due process of law.

16. It is submitted that the arguments advanced on behalf of the petitioner



2023:DHC:7861



with regard to the computation of limitation period are *malafide* in nature and the petitioner has failed to show any sufficient cause as has been mandated by the law.

17. It is submitted that in view of the foregoing submissions; the instant application is liable to be dismissed being bereft of any merits.

18. Heard and perused the material on record.

19. To condone the delay of 870 days in filing the revision petition, it is imperative to discuss the nature of the said delay, and whether such delay can be condoned based on the grounds raised by the applicant/petitioner.

20. Section 5 of the Act, provides for extension of prescribed period for filing an application under any provision except Order XXI of the CPC, thereby, giving powers to the Court to admit such application by condoning the delay after the prescribed period of limitation, and the said power is to be exercised only if “sufficient cause” has been shown thereto.

21. The aforesaid provision makes it clear that the phrase “sufficient cause” is a necessary condition for the extension of the prescribed period under the Act. Therefore, the petitioner/applicant needs to satisfy this Court that there is “sufficient cause” for delay in not preferring the petition/application within the prescribed time

22. The Hon’ble Supreme Court in ***Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81***, observed what constitutes as “sufficient grounds”. The relevant portion is extracted as under:

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a



platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose...”

23. The term “sufficient cause” as per the provision has been interpreted by different Courts and it is well settled that the question as to what constitutes sufficient delay cannot be rigid, rather the same has to be decided by the Courts on facts and circumstances of each case. The Hon’ble Supreme Court in the case of **Basawaraj (Supra)** held that while establishing “sufficient cause” for delay in filing, the parties to the matter should not have acted in a negligent manner or remained inactive. The parties must satisfy the Court that it was the sufficient cause so pleaded that prevented them from perusing their case.

24. In light of the above discussions, this Court is of the view that it cannot condone a delay unless there are sufficient reasons provided by the parties that are *bonafide* and do not constitute inaction or negligence on behalf of either party.



2023:DHC:7861



25. By way of the instant application, the petitioner has urged this Court to condone the delay of the 870 days due to the then prevailing pandemic COVID-19. It has been further submitted by the petitioner that as per the directions of the Hon'ble Supreme Court the entire period until 1st March 2022, has to be excluded and therefore, the actual delay in filing the instant revision petition is of 245 days. The petitioner in support of his arguments has contended that he was pursuing the application filed by him under Order VII Rule 11 of the CPC, for the dismissal of the respondent's fresh suit, i.e., the civil suit bearing CS DJ No. 131/2022, and therefore, the said period is also liable to be excluded.

26. This Court has gone through the entire pleadings, impugned order and other material place on record. Even if this Court excludes the period of the COVID-19, in view of the directions of the Hon'ble Supreme Court, this Court is still not convinced by the casual approach of the petitioner *qua* the delay of 245 days. The same ascribes lack of action and gross negligence to the petitioner in pursuing the case altogether, as is also apparent on the face of the record.

27. As per the settled principles of law, the Court can only condone a delay if there is a "sufficient cause" behind such delay. Merely stating that the petitioner was pursuing his case for the dismissal of the respondent's fresh suit under Order VII Rule 11 of the CPC, cannot be termed to be sufficient cause. The said situation can only be termed as non-seriousness of the petitioner and the other party cannot be left to suffer and desolated.

28. It is pertinent to mention that the petitioner has taken support of Section 14 of the Limitation Act, 1963. This Court is of the view that the said provision is not relevant and does not apply to the facts of the instant case.



2023:DHC:7861



The said provision states that the period of limitation during which a suit was being prosecuted in good faith but has been dismissed due to defects of jurisdiction or any other cause of like nature, shall stand excluded. The same is applicable only in the events as mentioned above and such being not the case in light of the instant facts, the said argument of the applicant/petitioner is, hereby, rejected.

29. Therefore, this Court cannot accept the reasons provided for a delay in filing the civil revision petition when it is evident that there was dereliction of duty by the petitioner in approaching this Court. Thus, the averments made in the application *qua* the delay of 245 days cannot be classified as a reasonable delay in any manner.

30. Hence, in light of the above facts and circumstances and application of law, this Court does not find any merit in the instant application as the petitioner has failed to satisfy that there exists sufficient cause for delay in filing the revision petition, a condition necessary for condonation of delay under Section 5 of the Act.

31. In view of the foregoing discussions, this Court does not find any cogent reasons to allow the instant application.

32. Accordingly, the instant application, being devoid of any merit, stands dismissed.

C.R.P. 291/2023

1. The present writ petition has been filed under Article 227 of the Constitution of India read with Section 115 and 151 of the Code of Civil Procedure, 1908, praying as follows:

“i. To call for the records of C.S. DJ No. 918 of 2019, pending before the Ld. ADJ-III South East District, Saket



2023:DHC:7861



Courts, New Delhi.

ii. To allow the present revision petition and set aside the order dated 24.03.2021, passed by the Court of the Ld. ADJ-III, South East District, Saket Courts, New Delhi in C.S. DJ No. 918 of 2019

iii Pass any other Order as this Hon'ble Court may deem fit."

2. In terms of the order of even date passed in CM APPL. 52985/2023, it is held that since the application seeking condonation of delay stands dismissed, the instant revision petition also stands dismissed along with pending applications, if any.

3. The order be uploaded on the website forthwith.

CHANDRADHARISINGH, J

OCTOBER 11, 2023

pa/ryp/db

Click here to check corrigendum, if any