



2024:DHC:3537



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

% **Date of order: 3rd May, 2024**

+ **RFA 36/2024, CM APPL. 2603/2024 & CM APPL. 2604/2024**

MANOJ AND ANR Appellants

Through: **Mr. Praveen Suri with Mr. Nikhil
Kumar Singh, Advocate.**

versus

SATISH KUMAR AND ANR Respondents

Through: **Mr. Vinay Kr. Garg, Sr. Advocate
with Mr. Ayush Gupta, Advocate.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 2605/2024 (condonation of delay in filing appeal)

1. The captioned regular first appeal has been filed on behalf of the appellants under Section 96 of Code of Civil Procedure, 1908 (hereinafter “CPC”) assailing the impugned judgment and order dated 26th May, 2022 passed by the learned Additional District Judge, District : Central, Tis Hazari Courts, Delhi in civil suit bearing CS DJ No. 15460/2016.

2. Vide the impugned judgment and order, the learned Trial Court decreed the above said civil suit in favour of the plaintiffs/respondents and against the defendants/appellants by restraining the appellants from encroaching or trespassing upon the suit property.



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3. The instant application has been filed on behalf of the applicants/appellants under Sections 5 and 14 of the Limitation Act, 1963 seeking condonation of delay of one year, four months and nine days in filing the captioned regular first appeal.

4. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment and decree suffers from errors of law and the learned Trial Court has failed to appreciate the entire facts and circumstances of the case which makes the same liable to be set aside, however, due to unforeseen circumstances, there is a delay in filing the captioned appeal.

5. It is submitted that after passing of the aforesaid impugned judgment and decree, the appellants were occupied in pursuing another regular first appeal bearing no. 288/2022 before this Court, arising out of another civil suit bearing no. 15203/2016 titled as 'M/s Monk Trading Pvt. Ltd. v. Shri Rajbir Singh & Ors.', where the decree dated 9th May, 2022 for damages was passed against them.

6. It is submitted that the issues arrived at in the civil suits bearing nos. 15460/2016 and 15203/2016 are interconnected and as the appellants had filed the above stated appeal, therefore, no appeal was preferred against the impugned judgment and decree disputed in the captioned appeal as the appellants were under *bona fide* belief that in case the challenge against the decree dated 9th May, 2022 is decided in favour of the appellants, the impugned judgment and decree dated 26th May, 2022 shall also be set aside.



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7. It is submitted that the appeal bearing no. 288/2022 was dismissed by this Court on 15th July, 2022 and 14th October, 2022 and the appellants had preferred SLP bearing no. 17414/2022 before the Hon'ble Supreme Court which was dismissed. It is further submitted that in the meantime the appellants filed a review petition bearing no. 254/2023 in RFA no. 288/2022 on 11th January, 2023, wherein the notice was issued to 'M/s Monk Trading Pvt Ltd.' and other legal heirs of the deceased respondent no. 2 for 16th February, 2024.

8. It is submitted that in the interregnum the appellants were also pursuing another civil suit before the learned District Court, Saket, New Delhi wherein they had filed one application under Section 14 of the Limitation Act, 1963 (hereinafter "the Act") which was partly allowed on 21st February, 2023.

9. It is further submitted that two other Civil Misc. (Main) petitions bearing no. 168/2023 and 828/2023 were also being pursued by the appellants before this Court.

10. It is submitted that since the appellants were occupied in pursuing various litigations at different forums, there occurred a delay of more than one year, four months and nine days in filing the instant regular first appeal.

11. It is submitted that the above stated grounds for delay are cogent reasons and sufficient cause that led to the delay and the same are *bona fide* reasons.

12. Therefore, in view of the foregoing submissions, it is submitted that



the instant application be allowed and after condoning the delay, the captioned appeal may be heard on merits.

13. *Per Contra*, Mr. Vinay Kumar Garg, learned senior counsel appearing on behalf of the non-applicants/respondents vehemently opposed the instant application submitting to the effect that the same being devoid any merit is liable to be dismissed.

14. It is submitted that by way of the instant application, the appellants are merely abusing the process of law and have not approached this Court with *bona fide* intentions.

15. It is submitted that in light of the foregoing paragraphs, the delay may not be condoned and accordingly, the instant application be dismissed.

16. Heard the learned counsel for the parties and perused the material available on record.

17. Before delving into the merits of the case, this Court deems it appropriate to discuss the law with regard to the principle of condoning delay under Section 5 of the Act which has been settled and has been reiterated by the Hon'ble Supreme Court as well as various High Courts in a catena of judgments.

18. The power conferred to the Courts under Section 5 of the Act is with the intent to impart substantial justice to all the parties to a *lis*. This Court is of the view that there should not be a pedantic approach towards condoning delay rather it has to be kept in mind that such matters shall be dealt rationally and in a pragmatic manner by overlooking the technical



considerations. Furthermore, each case has to be considered on the particularities of its own facts. For reference, Section 5 of the Act has been reproduced herein below:

“...5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section...”

19. A bare reading of the above said provision states that ‘sufficient cause’ is a necessary precondition to adjudicate an application seeking condonation of delay. The Court after determining the grounds raised by the party seeking extension of time being sufficient may decide whether or not the prescribed period of limitation shall be extended. However, the expression ‘sufficient cause’ in Section 5 of the Act must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

20. At this stage, this Court finds it imperative to refer to the latest judgment of the Hon’ble Supreme Court passed in ***Pathapati Subba Reddy***



v. **LAO, 2024 SCC OnLine SC 513**, relevant paragraphs of which are as under:

“...12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives ‘sufficient cause’ for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish ‘sufficient cause’ for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.



16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag v. Katiji², this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

17. It must always be borne in mind that while construing ‘sufficient cause’ in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.



18. This Court as far back in 1962 in the case of Ramlal, Motilal And Chhotelal v. Rewa Coalfields Ltd. has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.

23. In Basawaraj v. Special Land Acquisition Officer, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;



(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision....”



21. Perusal of the above cited judgment makes it clear that the law of limitation is founded on public policy and the legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The basic idea behind the said principle is that every legal remedy must be kept alive for a particular period, however, the Courts are bestowed with the power to condone the delay, provided that a sufficient cause is shown for not availing the remedy within the stipulated time.

22. The Hon'ble Supreme Court categorically observed that in order to determine whether the grounds raised by a party seeking condonation of delay fall within the ambit of 'sufficient cause', it has to be seen whether the delay has been properly, satisfactorily and convincingly explained. Furthermore, it is imperative for the Courts to ensure that the delay is not to be condoned only on sympathetic grounds.

23. At paragraph no. 17 of the aforementioned judgment, while construing principles regarding condonation of delay, the Hon'ble Supreme Court has interpreted the said principles in a rather peculiar way by relating it with the rights accrued to a decree holder. In the said paragraph, the Hon'ble Court noted that upon expiry of the period of limitation prescribed for filing an appeal within time, the party seeking condonation is not entitled for the same as it is the discretion of the Courts to excuse the delay. Further, upon expiry of the limitation period to file an appeal, the decree-holder gets vested with a substantive right which must not be disturbed and that the



decree holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

24. Now advertent to the facts of the instant application.

25. The appellants have contended that they were pursuing multiple litigations before different forums of law under *bona fide* belief and the same led to the unintentional delay of one year, four months and nine days in filing the instant regular first appeal. It is prayed that the said delay being inadvertent may be condoned and the captioned appeal may be heard on merits. The appellants have filed the instant application dated 30th December, 2023 as well as personal affidavits of the appellants dated 31st March, 2024 wherein they have reiterated their submission mentioned hereinabove. Relevant extracts of the same are as under:

“..10. That a perusal of the record would show as the chain of documents as well as the contentions in both the matters i.e. the matter tilted as Monk Trading Pvt. Ltd. versus Shri Rajbir Singh and which was also pending in the same court and therefore, both the matters were pursued in the same court of ADJ and therefore, even the Director of Mis Monk Trading Pvt. Ltd. is appearing as a witness for the Respondent No. 1 being this real brother, therefore, both the matters are inter-connected.

11. That the deceased Respondent No. 2 has also filed a Civil Suit seeking cancellation of these sale deeds which is pending in the Court of the Ld. ADJ, District: South, Saket Courts, New Delhi and pursued both appeals i.e. RFA No. 288/2022 filed by the appellants arising out of Civil Suit No. 15203 /2016, titled as Mis Monk Trading Pvt. Ltd. vs Shri Rajbir Singh &



others where a decree for damages was passed, therefore, apart from as per the advice of the Counsel pursued that both and challenged that order only and no appeal was preferred by taking the bonafide belief that _by virtue of challenging of order, judgment and decree dated 09.05.2022 and its setting aside then, the decree dated 26.05.2022 will also be set aside.

12. That the RFA was ultimately dismissed by the Single Bench of this Hon'ble Court on 15.07.2022 and 14.10.2022 and the appellants preferred a SLPL before the Hon'ble Supreme Court of India bearing SLP No. 17414 / 2022. The appellants apprised the court about the additional documents and thereafter, they filed a review petition in RFA No. 288/2022 on 11.01.2023. Besides, they also pursued the suit pending in the Saket Courts and wherein also they filed an application under Section 14 of the Limitation Act which was partly allowed on 21 ~02.2023 and two Civil Misc. (Main) Petitions, one filed by the L.Rs. of late Shri Rajbir Singh bearing CM (M) 168/2023 and another by Mis Monk Trading Pvt. Ltd. bearing C M (M) No. 828/2023 which are also pending for 6.11.2023 before the Single Bench. The appellants have pursued bonafidely, therefore, though, they had been advised on 20.12.2023 by their Counsel that mere filing on 22.09.2023 on 22.09.2023 that the review petition bearing no. 254 /2023 which was heard and notice of the same was issued to M/s Monk Trading Pvt. Limited and the other legal heirs of late Shri Rajbir Singh for not be ground to set aside the present order, judgment and decree dated 29.05.2022

13. That therefore, a delay for filing the present appeal for more than one year and 4 months and 9 days be condoned / excluded as the non-filing of the appeal within 90 days from the order, judgment and decree dated 26.05.2022, there are



cogent reasons and sufficient cause and also pursuing of the remedy taking against the another order, judgment decree dated 09.05.2022 in Civil Suit No. 15203 / 2016 bonafidely as well as the suit of declaration and injunction filed by their father bearing 80/ 2019 against the Respondent No. 1 and Mis Monk Trading Pvt. Limited and other, this period is to be excluded/condoned and the appeal of the appellants be heard on merits...”

26. In rival submissions, the respondents have refuted the instant application submitting to the effect that the appellants are abusing the due process of law and there is no merit in their case, therefore, the instant application seeking condonation of delay in filing the captioned regular first appeal may be dismissed outrightly.

27. The law on limitation can be summarized to the effect that Section 3 of the Act imposes bar of limitation on every suit, appeal and application if the same is filed after the expiry of the prescribed limitation period. However, Section 5 of the Act provides for a provision where the party may plead before the Court for condoning the delay that has been occurred, provided there has to be ‘sufficient cause’ and the said cause must be reasonable, *bona fide* and unintentional.

28. Further, the powers of the Court before which an application seeking condonation of delay has been filed is discretionary and as per the settled position of law, as also discussed in the preceding paragraphs, the party seeking condonation of delay has to explain the Court as to what was the *bona fide* sufficient cause which prevented them to approach the Court



within the prescribed statutory limitation.

29. In view of the above, this Court is of the view that the appellants herein have failed to make out case in their favour and have approached this Court at such a belated stage which is in complete disregard to the statutory mandate of law as well as the position of law settled by the Hon'ble Supreme Court.

30. In the instant case, the appellants have submitted vague and legally untenable grounds in order to seek condonation of delay and have filed the instant application on the grounds that they were pursuing an appeal in another civil suit among the same parties and the said dispute being interconnected led to the belief that there is no need to file separate appeal against the impugned judgment.

31. It has been submitted by the appellants that they were under the assumption that in the event they succeed in the other appeal, the judgment and decree which is the subject matter of the captioned appeal will also be set aside.

32. In light of the same, this Court is of the opinion that the above said ground is not a sufficient cause to condone the enormous delay exceeding more than a year whereas the limitation prescribed for filing an appeal is merely ninety days. This Court is of the considered view that the appellants are non-diligent towards their rights and have approached this Court with *mala fide* intentions since *prima facie* their seems to be an afterthought which further makes it contrary and in violation to the statutory provisions.



33. The impugned judgment and decree which is the subject matter of the captioned appeal was passed by the learned Trial Court on 26th May, 2022 and the appellants remained silent and non-vigilant upon their rights, and approached this Court after a lapse of more than a year stating that they were pursuing their rights in some connected matter.

34. This Court is of the view that in the event the said ground be taken as a legally tenable reasons to condone the delay, the same would lead to injustice to the respondent and would open floodgates for similar litigation for condonation of delay on the said grounds. The said view of this Court is consonance to the dictum of the Hon'ble Supreme Court in the afore cited judgment wherein it was observed that upon lapse of time in filing an appeal, the decree holder, i.e., the respondents herein treat the decree to be binding and may proceed on such assumption creating new rights.

35. Therefore, the appellants cannot be allowed to take aid of Section 5 of the Act to revive the dead and stale matter. Hence, in the interest of justice, this Court deems it appropriate to dismiss the application filed for condonation of the delay.

36. At this stage, it is pertinent to mention that the appellants herein have also pleaded that the delay in filing the captioned regular first appeal be condoned under the provisions of Section 14 of the Act. With regard to the same, it is held that the appellants have failed to submit before this Court any contention to show how they were pursuing any litigation in a wrong jurisdiction under *bona fide* beliefs.



37. The appellants have further failed to produce any record/application/appeal filed by them either before this Court or before any other Court, thereby, seeking exclusion of the said time period. Moreover, the appellants have failed to bring on record any evidence as to prove his due diligence and prosecution in good faith, therefore, not meeting the conditions enshrined in the said Section.

38. This Court is of the view that merely pursuing litigations before different forums of law cannot be a ground for condonation of delay unless it is shown from the records that the concerned party was pursuing the litigation before a wrong jurisdiction but under *bona fide* belief. In such event, due to the said *bona fide* mistake, the delay may be condoned.

39. Filing of a particular petition, suit or application within the limitation is the prescribed rule and any deviation from such prescribed rule is against the nature of settled legal propositions. As per the settled law, while condoning the delay, more specifically, enormous delay; the Courts have to consider the genuineness of the reasons furnished by the party, seeking condonation of delay. Such a huge delay is to be condoned only if the reasons are genuine and acceptable. Thus, the condonation of delay cannot be a routine affair. A person, who is not vigilant, is not entitled for the relief after a prolonged period.

40. In light of the discussions on facts as well as on law, this Court does not find the grounds raised by the appellants for condonation of delay to be cogent since the said grounds do not meet the test of 'sufficient cause' laid



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down by the Hon'ble Supreme Court as well as this Court in a catena of judgments. Therefore, this Court is not inclined to exercise its discretion under Section 5 of the Act to condone the inordinate delay in filing the captioned appeal and thus, the present application seeking condonation of delay in filing the regular first appeal is liable to be dismissed.

41. Accordingly, the instant application stands dismissed being bereft of any merit.

RFA No. 36/2024

42. In light of the order of even date passed in CM APPL. 2605/2024, the instant regular first appeal is liable to be dismissed being barred by limitation.

43. Accordingly, the captioned appeal stands dismissed. Pending applications, if any, also stands dismissed.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 3, 2024
RK/RYP/AV