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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 09th October, 2024***

+ **FAO 25/2024**
TARUN NAYAR

.....Appellant

Through: Mr. Arjun Singh Bawa with Ms. Pratima Dwivedi and Mr. Siddhartha, Advocates.

versus

M/S EMTA COAL LIMITED & ANR.

.....Respondents

Through: Ms. Roohie Hina Dua with Mr. Sahib Kochhar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Appellant herein is plaintiff.
2. He had filed a suit seeking recovery of money and damages.
3. Since there was no appearance from his side on 07.11.2022, the learned Trial Court, noticing that on earlier few occasions too, nobody had appeared on his behalf, dismissed the suit in default and also for non-prosecution.
4. Plaintiff moved an application under Order IX Rule 9 of CPC praying therein that the above said order be set aside and the suit may be restored.
5. However, such application has been dismissed by the learned Trial Court on the ground of delay.
6. Feeling aggrieved, the present appeal has been filed.
7. According to learned counsel for appellant/plaintiff, admittedly, the manner in which the plaintiff was pursuing his case was not indicative of due diligence and admittedly, nobody had appeared from the side of the plaintiff from 25.11.2021 onwards. It has, however, been submitted that,



earlier, the main counsel for the plaintiff had sustained ‘*severe ligament tear injury*’ in his right ankle which left him totally immobile for around five months, due to which he was even unable to visit his law-office and was unable to take stock of cases pending before various Courts. In order to corroborate the same, various medical reports and prescriptions have also been placed on record. It is also contended that thereafter such counsel even got infected with COVID-19 virus and remained under isolation and thus, he failed to keep track of the suit in question. Affidavit of such previous counsel was also annexed with the application, moved before the learned Trial Court.

8. It is also claimed that the counsel handling the above-mentioned suit, eventually, left the law office engaged by the Appellant on 25.12.2021 and the unfortunate dismissal is largely owing to the above said circumstances, for which litigant should not have been penalized.

9. It is submitted that when the status update was taken subsequently, it came to fore that the suit had been *dismissed-in-default* and immediately thereafter an application seeking restoration was submitted along with request for seeking condonation of delay in moving said application.

10. Learned counsel for respondents/defendants has opposed the appeal contending that the conduct of the plaintiff was clearly suggestive of inaction and laches and, therefore, the learned Trial Court was fully justified in not permitting restoration of the suit and, therefore, there is no reason, whatsoever, to allow the present appeal.

11. There is no doubt that on various previous few dates, prior to the dismissal of the suit, the manner in which the plaintiff was pursuing his case was not up to standard. On one occasion, he was granted last and final



opportunity to lead evidence, while also being burdened with cost.

12. Be that as it may, learned Trial Court seems to have got swayed away, principally, because of the manner in which the case was being pursued, prior to the dismissal of the suit and, therefore, came to the conclusion that there was no sufficient cause for non-appearance. *Such previous conduct, even if it was not up to the mark, could not have been the decisive factor. Any instance of previous negligence, being irrelevant in the present limited context, should not have been given any undue weightage.*

13. During course of the arguments, learned counsel for appellants/plaintiff reiterated that no party should be made to suffer on account of inaction on the part of his counsel, moreover, when such inaction did not smack of any *malafide*. It is submitted that it would be travesty of justice, if the suit is not restored in the above said factual matrix. Reliance has been placed upon *Rafiq and Another vs Munshilal and Another: (1981) 2 SCC 788*, *Board of Trustees of the Port of Calcutta and Anr. vs Kartick Chandra Saha: (2017) SCC OnLine Cal 4478* and *Chhaya w/o Dattaray Auragnabadkar (dead) through L.Rs. vs Waman s/o Pundlik Bhaje: 2017(6) Mh.L.J 671*.

14. Undoubtedly, even if the counsel for the appellant was unable to keep track of the matter, there was no one to have prevented the appellant himself to have at least found out as to what was happening in his own case during the relevant period. Be that as it may, it is needless to emphasize that while considering any such application and assessing whether the cause shown is sufficient or not, the approach of the Court, *albeit*, without unreasonably diluting the rigors of the statutory provision, should, usually, be little liberal, pragmatic and practical, instead of being pedantic and technical, more so



when delay is not inordinate.

15. Here, the suit was dismissed on 07.11.2022 and application for restoration was not filed with any undue delay. It was filed on 12.01.2023. The period of limitation is 30 days and therefore, the delay was merely of 35 days. However, learned Trial Court did not condone such delay and dismissed the application seeking condonation of delay. Such discretion to condone the delay is required to be exercised judiciously while taking into account the peculiar facts and circumstances of the given case. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, unless where the conduct of any such party smacks of malafide or total inaction or gross negligence. It also needs to be kept in mind that such rigid approach would mean all the doors shut for any plaintiff in such a situation as he would be in no position to file a fresh suit either. Apparently, several reasons have been assigned explaining non- appearances prior to dismissal of suit and not very convincing reason has been given as to why there was no appearance on the given date and why the application was not moved within time, but it looks palpable that the appellant was depending heavily upon his counsel who, somehow, could not keep himself updated, which resulted in dismissal of suit. Therefore, there was no reason to have denied condonation of delay of mere 35 days.

16. In *Abdul Qadeer vs Mohd. Saghir And Ors.*: 95(2002)DLT647, this Court observed as under:-

“8. Order 9 Rule 9 CPC empowers a court to set aside an order of dismissal of a suit for non-appearance of the plaintiff on the date of hearing on being satisfied that there was sufficient cause for such absence. Words "sufficient cause" have not been



defined in the CPC but broadly speaking, they mean a 'good, adequate or sound cause'. It is now well settled that a liberal and not pedantic approach is adopted for condensation of delay and restoration of suit. There is always an element of carelessness and negligence in the cases where suit is dismissed in default. But court should always be liberal and not deny a party hearing of his case on merit on mere technicalities unless of course the court finds that the absence of the party was not bonafide or it was with latent motive of causing delay or prolonging the disposal of the suit. For advancement of justice where the opposite party may be adequately compensated by costs the suit should be may be adequately compensated by costs the suit should be restored. It is true the absence of a counsel on the date of hearing by itself is not a sufficient cause for condensation of delay but it should also not be lost sight of in our judicial administration system where the parties lean on their advocate heavily for prosecuting or defending a cause once they appoint him. The mistake and negligence of an advocate in a given situation and circumstance may amount sufficient cause to condone the delay and restore the suit."

17. Keeping in mind the overall facts and circumstances of the case, the present appeal is allowed and as a necessary corollary, the suit is restored to its original number and position.

18. However, at the same time, while keeping in mind the fact that there was regular appearance, on all such previous dates, from the side of the defendants, it will be appropriate if the appellant is burdened with a cost of



Rs. 25,000/- to be paid to his adversary within four weeks from today. Appellant shall also ensure that unpaid cost, if any, is also cleared within the above said period of four weeks.

19. The appeal stands allowed in the aforesaid terms and both the sides would, accordingly, appear before the learned Trial Court or Successor Court on 22.10.2024 and the learned Trial Court shall proceed further with the matter in accordance with law.

(MANOJ JAIN)
JUDGE

OCTOBER 9, 2024/sw