



2024:DHC:3394



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

% **Date of order: 30th April, 2024**

+ **RFA 197/2021**
LOVENEET SINGH & ORS Appellants

Through: **Mr.G.K Bharti & Mr.Tanishq**
Khurana, Advocates alongwith A-1

versus

NEERAJ SARNA Respondent

Through: **Mr.R.S.Chaggar, Ms.Sangeeta**
Bhamra and Mr.Aman Sharma,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant regular first appeal under Section 96 read with Order XXXVII Rule 7 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the appellants assailing the impugned judgment and decree dated 10th February, 2020.

2. The facts of the instant petition are as under:

- a. The appellant no. 1 namely Mr. Loveneet Singh is engaged in the business of sale of mobile phones under the name and style of M/s Dashment Jee Telecom, i.e., the appellant no. 3

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herein.

- b. The respondent, i.e., the plaintiff before the learned Trial Court had filed a summary suit bearing CS DJ no. 77/2019, under Order XXXVII of the CPC against the present appellants, i.e., the defendants before the learned Trial Court, for recovery of Rs. 30,00,000/- along with *pendent-lite* and future interest and costs.
- c. In the above said civil suit, the respondent had pleaded that the parties were in a friendly relation with each other and as the appellants were facing some financial difficulties in running the aforesaid business, they approached the respondent for a friendly loan. It is upon failure of the appellants to repay the said loan amount that the respondent filed the aforementioned suit.
- d. In the suit, the summons were issued to the appellants subsequent to which the appellants filed an application under Order XXXVII of the CPC, thereby, putting their appearance.
- e. Thereafter, the respondent/plaintiff moved an application under Order XXXVII Rule 3 (4) of the CPC for issuance of summons for judgment and consequently, summons for judgment were issued to the appellants which were served on 22nd May, 2019.
- f. Subsequently, the appellants on 10th July, 2019, filed an



application seeking leave to defend the suit along with an application under Order XXXVII Rule 3 (7) read with Section 151 of the CPC for condonation of delay. Thereafter, the respondent in addition to filing his reply to the above said application filed an application under Order XXXVII Rule 5 of the CPC for attachment before judgment and another application under Order XXXIX Rule 1 & 2 of the CPC seeking interim injunction against the appellants to not to sell their ancestral property.

- g. Thereafter, the application filed by the appellants seeking leave to defend being devoid of any merit was dismissed by the learned Trial Court, for failure of the appellants to show sufficient cause for delay in filing, and vide the impugned judgment and decree dated 10th February, 2020 the aforementioned summary suit was decreed in favour of the respondent.
- h. Being aggrieved by the same, the appellants have approached this Court seeking setting aside of the impugned judgment and decree.

3. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment and decree passed by the learned Trial Court is bad in law and being devoid of any merit, is liable to be set aside.

4. It is submitted that the learned Trial Court failed to consider the fact



that the summons of judgment under order XXXVII Rule 3 of the CPC sent on 15th May, 2019 were not received by the appellants on 22nd May, 2019, rather, the same were received by one of the part time employees of the appellant no. 1. It is further submitted that the aforesaid summons came to the knowledge of the appellant no. 1 only on 29th June, 2016 while searching for some records/documents.

5. It is submitted that whilst passing the impugned judgment and decree, the learned Court below failed to appreciate the appellants' argument that during the period of service of the summon, the appellant no. 1 was in receipt of a large number of summons, legal notices due to his financial crises.

6. It is submitted that when the summons came to the knowledge of the appellant no. 1, he immediately informed his counsel who happened to be out of India and was supposed to come back later by the evening of 29th June, 2019.

7. It is further submitted that post 29th June, 2019 as well, the counsel for the appellants was not available as he had gone out of town to Punjab and returned only on 8th July, 2019. It is further submitted that although the applications seeking leave to defend as well as the application seeking condonation of delay were ready, however, due to the utter haste, the application seeking condonation of delay could not be filed along with the application seeking leave to defend.

8. It is submitted that the learned Trial Court failed to appreciate the travel records of the counsel for the appellants' produced in evidence



implying that the reasons as stated in the application for delay in filing the leave to defend application were *bona fide* and fell within the definition of 'sufficient cause'.

9. It is submitted that learned Trial Court whilst passing the impugned judgment and decree erred in deciding upon the quantum of the amount alleged to be recovered from the appellants.

10. It is submitted that the learned Trial Court failed to appreciate that the respondent in order to establish any of the averments made by him in the plaint could not adduce any written contract or any correspondence to be read into the form of a contract.

11. It is submitted that the respondent herein had originally approached the appellant no. 1 for the purposes of introducing him to various financial institutions which could provide the appellant no. 1 with the loan as was required by him at that time. It is further submitted that the respondent assisted the appellants in procuring the loan and on the pretext of assisting, he took various cheques from the appellant no. 1 stating it to be a security measure demanded by the financial institutions.

12. It is submitted that taking advantage of the innocence of the appellants, the respondent filled the cheques received by him with fictitious amounts and dates and thereafter presented the same to the bank in order to take undue advantage of the appellant no. 1's situation thereby blackmailing him for money with such underhand tactics and frivolous suits.

13. It is submitted that the present recovery suit is *mala fide*, mischievous and without any cause of action or any merit whatsoever and is liable to be



dismissed *per se* as the respondent is in the habit of filing false and frivolous cases in order to cause undue hardship and further torture the appellants in order to try and extort undue amounts of money from them.

14. Therefore, in view of the foregoing submissions, it is submitted that the instant appeal may be allowed and the reliefs be granted as prayed for.

15. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant appeal submitting to the effect that the same being devoid of any merit is liable to be dismissed.

16. It is submitted that the present appeal is nothing but a false and fabricated claim filed with the intention to misuse the process of law.

17. It is submitted that the learned Trial Court rightly passed the impugned judgment and decree dismissing the appellants' application for condonation of delay as they failed to disclose any cogent, relevant and sufficient grounds for condoning such delay in filing the application for leave to defend.

18. It is submitted that the above suit was filed on the basis of a cheque dated 1st August, 2018, bearing No. 000722 for an amount of Rs.30,00,000/- drawn on Axis Bank, Hudson Lines, New Delhi- 110009 which was signed and issued by the appellant no. 1 and handed over to the respondent jointly by the appellant no. 2 in discharge of the their legal liability towards repayment of the friendly loan which the appellant no. 1 and 2 had availed from the respondent. Further, the bank statement filed by the respondent along with the plaint, clearly discloses the release of payments to the appellants by the respondent on various dates.



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19. It is submitted that the learned Trial Court has rightly passed the impugned judgment and decree as the case of the respondent stands established on the basis of the documents produced before the learned Court below which have been taken into consideration in accordance with the law, therefore, the findings *qua* the merits of the summary suit are correct and there is no illegality of any kind thereto.

20. It is submitted that the appellants have failed to explain any 'sufficient cause' before the learned trial Court, for it to condone the delay of 38 days in filing the application seeking leave to defend from the date of service of summons for judgment, i.e., on 22nd May, 2019.

21. It is further submitted that the averments made on behalf of the appellants are vague and baseless as the appellants have suppressed the facts that the summons were duly served upon them through their Manager namely Mr. Bhupesh. It is further submitted that a copy of the said summons for judgment along with a copy of the plaint were duly received by the appellant no. 1 over phone and the factum of which is on record as per the process server. It is submitted that even otherwise, the appellants were fully aware of the pendency of the summary suit as the appellants had already put in their appearance within the prescribed period after service of summons under Order XXXVII Rule 2 of the CPC. Therefore, in view of the foregoing submissions, it is submitted that the instant petition being devoid of any merit may be dismissed.

22. Heard the learned counsel appearing on behalf of the parties and perused the material available on record.



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23. It is the case of the appellants that the learned Trial Court has wrongfully passed the impugned judgment and decree since it failed to take into account the entire facts and circumstances of the case. It has also been contended that the learned Trial Court erred in deciding the appellants' application seeking condonation of delay since it failed to take into account the circumstances leading to the said delay.

24. It has been asserted that the summons of judgment which were sent on 15th May, 2019 were not received by the appellants on 22nd May, 2019, rather the same were received on 14th June, 2019 by a part-time employee of the appellant no. 1 who failed to intimate the same and it was only on 29th June, 2016 that the appellant no. 1 got aware of the aforesaid summons while searching for some records/documents. It has also been asserted that the appellant no. 1 after knowledge of the above, immediately informed his counsel's office, however, he was out of India and was supposed to come back later in the evening on 29th June, 2019.

25. It is also contended that the counsel for the appellants was not available in Delhi as he had gone to Punjab and returned only on 8th July, 2019. It is further contended that although the applications for leave to defend as well as the application for condonation of delay were ready, however, due to the utter haste, the application for condonation could not be filed along with the application for leave to defend.

26. The appellants on merit have contended that the suit filed by the respondent is completely false and fabricated and that no case for grant of decree of Rs.30,00,000/- is made out. It has been further submitted that the



appellants were in dire need of some funds for the operation of their business and the respondent assisted the appellants in this transaction and on the pretext of assisting, he took various cheques from the appellant no. 1. Lastly, the said cheques were misrepresented by the respondent before the learned Trial Court and the same could not have been relied upon by the learned Court to pass the impugned judgment and decree in favour of the respondent. Hence, the instant appeal may be allowed and the impugned judgment and decree, being bad in law, may be set aside.

27. In rival submissions, it has been submitted on behalf of the respondent that the impugned judgment and decree has been passed by the learned Court below after taking into consideration the entire facts and circumstances available on its record and in accordance with the law.

28. It has been contended that the appellants had approached the respondent to avail a friendly loan and in return a cheque dated 1st August, 2018, bearing No. 000722 for Rs.30,00,000/- drawn on Axis Bank, Hudson Lines, New Delhi- 110009 was signed and issued by the appellants in order to discharge their legal liability towards repayment of the above said friendly loan. Since the appellants failed to repay the loan amount, the same was sought to be recovered by way of filing a summary suit under Order XXXVII of the CPC.

29. With regard to the appellants' application seeking condonation of delay, it has been submitted on behalf of the respondent that the appellants were fully aware of the aforementioned summary suit as their counsel had put in appearance within the prescribed period after service of summons



under Order XXXVII Rule 2 of the CPC.

30. It is further asserted that the ground taken by the appellants pertaining to non-receipt of summons in a timely manner is flawed and without merit as the appellants have failed to explain any 'sufficient cause' before the learned trial Court to condone the delay of 38 days in filing the application for leave to defend from the date of service of summons for judgment, i.e., on 22nd May, 2019.

31. Furthermore, the averments made on behalf of the appellants are vague and baseless as the appellants have suppressed the facts that the summons were duly served upon them through their Manager namely Mr. Bhupesh who, after contacting the appellant no. 1 on phone and taking instructions from him in this regard, had received the copy of the said summons for judgment along with a copy of the plaint and the said fact stands duly recorded in the report of the process server. Hence, the impugned judgment and decree has been passed in accordance with the law and after due consideration of facts of the case which makes the instant appeal liable to be dismissed.

32. At this juncture, this Court, in order to ascertain the legality of the findings recorded by the learned Trial Court, shall peruse the contents of the impugned judgment and decree, relevant extracts of which are as under:

"....6. Reverting to the application under reference i.e. under Order XXXVII Rule 3(7) r/w Sec. 151 CPC moved on behalf of the defendants praying therein to condon the delay in filing the application seeking leave to defend the suit, it is averred in the application that the summons for judgment were received by the



servant of the defendants on 14.06.2019 who forgot to inform the defendants about the same and it came to the knowledge of defendant no. 1 only on 29.06.2019 when he was looking after some documents/invoices etc. Defendant no. 1 immediately tried to contact his' Counsel but he was out of India and was supposed to return on the late evening of 29.06.2019. However, after 29.06.2019, learned Counsel for the defendants was not available in Delhi as he had gone to Punjab and came back only on 08.07.2019.

It is further stated that the present application seeking condonation of delay in filing the application~ seeking leave to defend the suit was supposed to be filed along with the application seeking leave to defend the suit, but somehow due to mistake of the clerical staff of learned Counsel for the defendants, the same could not be filed along with the application seeking leave to defend the suit.

7. The plaintiff has filed reply to the application under reference stating therein that the defendants have suppressed material facts from this Court and have miserably failed to disclose any cogent, relevant and sufficient ground for condoning the delay in filing the application seeking leave to defend the suit.

8. I have heard arguments addresssed by learned Counsel for both the parties and have also gone through. the case law in this regard.

During the course of the arguments, the learned Counsel for the plaintiff has stated that the plaintiff has also initiated proceeding u/s 138 of the N.I. Act against the defendants in respect of the above said dishonoured cheque. The learned Counsel for the plaintiff has further urged that the application under reference is bereft of any details and the grounds



mentioned in the application are not genuine in nature, hence, the same may be dismissed.

9. I have gone through various documents viz. certified copy of the bank statement of the plaintiff in respect of his saving bank account maintained at Yes Bank; certified copy of cheque bearing no. 000722 dated 01.08.2018 amounting to Rs. 30,00,000/- issued by defendant no. 1 in favour of the plaintiff; cheque returning memo dated 14.08.2018; certified copy of the complaint case bearing CC No. 4716/2018 filed by the plaintiff against the defendants u/s 138 of the N.I. Act; certified copy of the office copy of the legal demand notice dated 28.08.2018; certified copy of the reply dated 18.09.2018 sent by the defendants to the legal notice dated 28.08.2018 and certified copy of the complaint dated 22.09.2018 made by the plaintiff to SHO PS Mukherjee Nagar.

10. The excuse of law is no excuse and the defendants should have been more cautious in filing application seeking leave to defend the suit within the prescribed period as the defendants were already aware about the pendency of the present case as they had put in appearance within the prescribed period.

*Further, the non-availability of Advocate is no ground to condone the delay and the defendants should have engaged another Counsel. In Civil Appeal titled as "**Basawaraj & Anr. vs. The Spl. Land Acquisition Officer, Civil Appeal No. 6974 of 2013**" the Hon'ble Supreme Court has held as follows:.....*

12. In the instant case, summonses for judgment were served upon the defendants on 22.05.2019 and the defendants had filed an application seeking leave to defend the suit only on 10.07.2019 i.e. beyond the prescribed period of 10 days. The ground taken by. The defendants in the application under



reference seems to be an afterthought and vague in nature. Even otherwise, the defendants were well aware about the pendency of the present case as they had filed appearance, as per law, so they should have been more vigilant in filing the application seeking leave to defend the suit.

13. Accordingly, in view of the discussions here in above, no ground for condonation of delay in filing an application seeking leave to defend the suit, is made out. The application under reference i.e. under Order XXXVII Rule 3(7) r/w Sec. 151 CPC, therefore, stands dismissed.

14. Sub Rule 6(3) of Order XXXVII CPC say that; if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith.

15. Since the defendants have failed to apply for seeking leave to defend the suit within the prescribed period, the averments made in the plaint are taken as true and correct.

16. For the foregoing reasons, the suit of the plaintiff is decreed and a decree is passed in favour of the plaintiff and against the defendants in the sum of Rs. 30,00,000/- along with costs of the suit. The plaintiff is also entitled to recover interest @ 9% p.a. w.e.f. the filing of the present suit till the date of decree. Decree Sheet be drawn accordingly and file be consigned to Record....”

33. Upon perusal of the above, it is made out that the appellants had filed an application seeking condonation of delay in filing their application to defend the summary suit. The appellant no. 1, i.e., the defendant no. 1 asserted before the learned Trial Court that his servant/part-time employee



failed to inform him about the receipt of summons for judgment until it was too late and also that counsel for the appellants was unavailable due to him being out of country and later on in another state.

34. Additionally, the appellants claimed that due to a mistake on account of their clerical staff, the application for condonation of delay could not be filed with the application for leave to defend. However, the respondent, i.e., the plaintiffs before the learned Court below argued against condoning the delay thereby alleging that the appellants had failed to show sufficient cause, suppressed material facts and lacked genuine grounds to account the said delay.

35. After hearing arguments of both side, the learned Trial Court perused various documents on its record including the bank statement, a cheque, a legal notice and complaints made by the respondent against the appellants. The learned Trial Court observed that despite the appellants' plea seeking condonation of delay, the reasons stated therein were not cogent in the eyes of law and accordingly, the appellants' applications seeking condonation of delay in filing the leave to defend and the application seeking leave to defend were dismissed.

36. The learned Trial Court further noted that the appellants were well aware about the ongoing summary suit being filed against them since they had put in their appearance and they should have been more cautious in pursuing the litigation. Consequently, upon finding that the appellants/defendants failed to apply for leave to defend within the prescribed period, the averments made in the respondent/plaintiff's plaint



were accepted as true and correct and the learned Court below ruled in favour of the respondent, thereby, decreeing the suit in his favour for an amount of Rs.30,00,000/- along with costs and interests.

37. In the above backdrop, the issue that falls before this Court is to decide whether the learned Trial Court has rightly passed the impugned judgment and decree or does the same require interference by this Court under its appellate jurisdiction.

38. Before adverting into the facts of the instant case, it is prudent to understand the nature and scope of the principle governing the delay in filing an application for leave to defend under Order XXXVII of the CPC. The relevant extracts of the said provision are as under:

“...Order XXXVII – Summary Procedure

Order XXXVII Rule 3. Procedure for the appearance of defendant

[3. Procedure for the appearance of defendant.— (1) *In a suit to which this Order applies, the plaintiff shall, together with the summons under Rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.*

(2) *Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.*

(3) *On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff*



himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4-A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,—

- (a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or*
- (b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may*



be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.]..”

39. A perusal of the above provision states that Order XXXVII of the CPC is a pivotal mechanism designed to facilitate the swift resolution of specific types of civil disputes, particularly those pertaining to commercial transactions and debt recovery. Its overarching purpose is to streamline the legal process, expediting the adjudication of uncontested claims while concurrently conserving judicial resources.

40. Order XXXVII enables the Courts to efficiently dispose of cases without the need for protracted trial proceedings by providing a structured framework for the adjudication of summary suits, which are typically based on documentary evidence. This procedural efficiency not only reduces the burden on the judiciary but also affords litigants an expedient route to obtain justice, thereby, upholding the principles of fairness and speedy disposal in civil litigation. Prescription of Rule 3(5) within the framework of Order XXXVII of the CPC, assumes a particular significance, due to its imposition of a stringent timeline on defendants seeking leave to defend the suit.

41. Tersely stated, the defendants under this provision, were granted a time period of ten days’ from the date of service of summons to apply for leave to defend by way of an application before that Court. Such a concise



timeframe underscores the imperative nature of prompt action in the face of legal proceedings, thereby, emphasizing the necessity for defendants to promptly present their defence or objections.

42. By imposing the above said abbreviated window, Rule 3(5) of Order XXXVII of the CPC serves as a deterrent against dilatory tactics and ensures the expeditious disposal of summary suits, aligning with the overarching objective of Order XXXVII of the CPC which is to facilitate the resolution of civil disputes. Moreover, this stringent timeline also underscores the importance of timely engagement in legal proceedings, fostering a culture of responsiveness and efficiency within the realm of civil litigation.

43. Furthermore, Rule 3(7) of Order XXXVII of the CPC provides for the defendants to seek an extension of time beyond the stipulated period of ten days under Rule 3(5). Rule 3(7) provides for a mechanism and allows the defendants to apply to the Court to enter appearance or leave to defend the suit even after expiration of the prescribed timeframe, provided they demonstrate sufficient cause/grounds for the said delay. The provision stated above has been enshrined with an intent to recognize certain extraordinary circumstances, wherein, the defendants may require additional time to put forth their defence and/or gather relevant evidence, thereby, ensuring fairness in the adjudicative process while maintaining the overarching objective of expeditious dispute resolution under Order XXXVII of the CPC.

44. The law with regard to the condonation of delay in filing the application seeking leave to defend is well settled. A Coordinate Bench of this Court in *Escorts Finance Ltd. v. Nielcon Ltd.*, 2000 SCC OnLine Del



39, observed that there exist three key principles to be taken into consideration for condonation of delay in filing applications seeking leave to defend. *Firstly*, a liberal interpretation of the words “sufficient cause” is required for the sake of justice and such interpretation should only be done in cases where there is no negligence, inaction or lack of *bona fide* on the part of the applicant. *Secondly*, the need for due care and attention and the want for due diligence negates the existence of sufficient cause. *Thirdly*, the onus of proof to show presence of due care and diligence along with lack of negligence and inaction is on the party seeking extension. *Lastly*, each case must be considered and tried on the merits of its own facts and circumstances. The relevant paragraphs of the said judgment are reproduced herein below:

“...I have heard learned counsel for the parties. Learned counsel for the defendants has contended that the defendants are located in Bombay and delay was caused in finalising the replies by their counsel in Delhi and Bombay as some amendments had to be made in the draft replies prepared by their counsel in Delhi and Bombay, the delay is unintentional and bona fide and in the circumstances sufficient cause exists for condonation of delay. Whereas learned counsel for the plaintiff has contended that there is gross negligence, inaction and lack of diligence and bona fides on the part of the defendants and sufficient cause for condonation of delay is not made out. He has relied on Ram Lal v. Rewa Coalfields Ltd. AIR 1962 SC 361, DCM Financial Services Limited v. Khaitan Hostombe Spinel Ltd. 1998 (47) DRJ 210 and Nirayu Pvt. Ltd. v. Mohan Lal 1998 (46) DRJ 337.

Rule 3(7) of Order 37 which provides for condonation of delay reads as under:—



3. Procedure for the appearance of defendant.—

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(7) *The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.*

Provision for condonation of delay on “sufficient cause” is also provided under Section 5 of the Limitation Act. The Supreme Court in the case of Ram Lal (supra) has laid down that two important considerations have to be borne in mind for construing Section 5 of the Limitation Act. First consideration is that the expiration of the period of limitation prescribed gives rise to a right in favour of the other party and the right so accrued should not be light heartedly disturbed. The other consideration is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone the delay, of course, this discretion should be exercised to advance substantial justice. The Supreme Court has referred with approval to the following observations made by Madras High Court in Krishna v. Chathappan ILR 13 Mad 269:—

“Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words ‘sufficient cause’ receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant.”

In this case, if the delay is not condoned, plaintiff will be entitled to straightaway decree as provided under Order 37 Rule 3(6) of the Code.



In DCM Financial Services Limited (supra), it has been laid down that the test whether or not a cause is sufficient is to see whether delay could have been avoided by the party by the exercise of due care and attention as nothing shall be deemed to be done bona fide or in good faith which is not done with due care and attention. The same test has also been laid down in the case of Nirayu Pvt. Ltd. v. Mohan Lal (supra).

The principles thus to be taken into consideration for condonation of delay would be: (1) while liberal construction is to be given to the words “sufficient cause” to advance substantial justice, liberal construction, however, is available only when no negligence or inaction or want of bona fide is imputable to the party invoking Section 5; (2) want of due care and attention or want of due diligence negatives the existence of sufficient cause; (3) burden is on the party seeking extension of limitation to show that he acted with care and attention and was not negligent or careless; (4) each case is to be seen on its facts and circumstances and the circumstances to be “sufficient cause” must appear to the Court to be reasonable having regard to the facts and circumstances of the case.

For determining whether “sufficient cause” in the circumstances exists or not, the object of the enactment wherein this discretion is sought to be exercised would also be a relevant consideration.

The provisions of Order 37 of the Code are a special enactment which applies to certain categories of cases. The object for this enactment is that the defendant does not unnecessarily prolong litigation and prevent the plaintiff from obtaining an early decree in a class of cases where speedy decisions are desirable in the interest of trade and commerce.

Under summary procedure of Order 37, the plaintiff is required to serve the defendant with the summons of the suit. Such summons has to accompany copy of the plaint and other relevant documents relied by the plaintiff. On receipt of the



same, defendant has to make appearance within 10 days of such service and then the plaintiff has to take out summons for judgment to the defendant and then the defendant has to make an application seeking leave to defend within 10 days of such receipt. There will obviously be sufficient time gap between the two steps to be taken by the defendant. The first step puts the defendant to notice to be ready for taking steps for leave to defend in case he wants to contest the suit of the defendant in time and for that purpose he is equipped with copy of the plaint and other documents relied in support by the plaintiff. The question thus is whether the defendants have acted with due care and diligence or have been negligent and careless in approaching the Court...”

45. Furthermore, in ***D.C.M. Financial Services Ltd. v. Khaitan Hostombe Spinels Ltd.***, 1998 SCC OnLine Del 665, a Coordinate Bench of this Court further held that the test for whether or not there exists sufficient cause is to see whether the delay in question could have been avoided by the party through the exercise of due care and nothing shall be deemed to be a *bona fide* action of the party if not enacted with due care and attention. Similarly, the test discussed above was further laid down in the case of ***Nirayu Pvt. Ltd. v. Mohan LaL***, 1998 SCC OnLine Del 249.

46. Adverting to the merits of the present appeal which arises out of the summary suit filed by the respondent herein under the provisions of Order XXXVII of the CPC, wherein, the respondent sought recovery of Rs.30,00,000/- along with pendent-lite and future interest @ 24% per annum.

47. Thereafter, the appellants were served summons in the prescribed



proforma as mandated under Order XXXVII of the CPC and the appellants accordingly filed an application under Order XXXVII of the CPC, putting their appearance.

48. Subsequently, the respondent filed an application under Order XXXVII Rule 3(4) of the CPC by which the appellants were issued summons for judgment and as per the learned Trial Court's record, the same was served upon the appellants on 22nd May, 2019.

49. The appellants, though moved an application seeking leave to defend the summary suit, however, the same was moved way beyond the prescribed period of ten days post the receipt of the summons for judgment, as mandated in Order XXXVII of the CPC.

50. The appellants also moved an application under Order XXXVII Rule 3(7) read with Section 151 of the CPC praying condonation of delay in filing the application seeking leave to defend the said suit.

51. In their application seeking condonation of delay, the appellants submitted that the summons for judgment were received by them only on 14th June, 2019 and that too by their part-time employee who forgot to inform them about the same.

52. It was further contended before the learned Court below that receipt of summons came to the knowledge of the appellants only on 29th June, 2019 when sifting through some documents. It was also contended that the appellants further faced delay on account of not being able to communicate with their counsel as he was unavailable until 8th July, 2019. Moreover, even when the application seeking leave to defend the summary suit was finally



filed, due to the mistake on account of the clerical staff of the appellants' counsel, it led to the filing of the said application without the adjoining application seeking condonation of delay in filing of the leave to defend application.

53. With regard to the facts of the matter at hand and upon applying the principles of law enunciated in the preceding paragraphs, the appellants showcased clear inaction and a lethargic attitude in seeking leave to defend the summary suit filed before the learned Trial Court.

54. The appellants have cited the receipt of the summons by their part-time employee as the primary reason for the delay stating that the said employee failed to inform them about the receipt of the summons for judgment.

55. In light of the aforesaid observation, it becomes pertinent to refer to the provisions contained under Rule 3(2) of Order XXXVII of the CPC, which clearly accounts for situations that unless ordered otherwise, any summonses intended for the defendant has to be considered properly served if they are delivered to the address provided by the defendant for such purposes. The statutory requirement enunciated above was duly fulfilled in the present case as the summons for judgment was served at the address of the appellant. Moreover, as the appellants had already filed an application putting their appearance on the record, they should have anticipated the eventual receipt of the summons for judgment as the same is the next procedural step in a summary suit.

56. Therefore, the contention of the appellants that they were not aware



about the summons since it was received by their part-time employee is thus held to be legally unsustainable and bereft of any merit as the same does not demonstrate any due care or attention as stipulated in the judgments discussed above. Hence, the actions of the appellants before the learned Court below cannot be construed to be *bona fide*. Furthermore, the secondary reason for delay as averred by the appellants before the learned Trial Court was the non-availability of their counsel due to his travel schedule and the learned Court below whilst relying upon the judgment of the Hon'ble Supreme Court in such regard, rightly arrived at the conclusion that the same is not a cogent reason and cannot be taken as a sufficient cause to condone the delay.

57. As per the settled position of law, bearing in mind the expeditious nature of the provisions of summary suit, condonation of delay is an exception and must not be granted in a routine manner. The Courts while condoning the delay, more specifically, enormous delay, have to consider the genuineness of the reasons furnished by the party seeking condonation of delay. Only if the reasons are genuine and acceptable, then alone, such a huge delay is to be condoned and not otherwise. A person, who is not vigilant, is not entitled for the relief after a prolonged period.

58. It is held that the expression 'sufficient cause' implies the presence of legal and adequate reasons. The appellants in the instant appeal have been unable to show as to how, besides purported to have been acting *bona fide*, they had taken all the possible steps within its power and control and had approached this Court without any unnecessary delay.



59. The learned Trial Court in paragraph no. 10 has relied upon the judgment of the Hon'ble Supreme Court in ***Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81***, by stating that the ground of non-availability of the counsel is not a sufficient ground for condoning the delay.

60. The Hon'ble Supreme Court in the afore cited judgment, has held that the word 'sufficient cause' implies that the facts and circumstances of a case must afford sufficient grounds to enable the Court concerned to exercise its discretion judiciously.

61. This Court is of the considered view that the grounds taken by the appellants for condoning the delay in filing the application seeking leave to defend cannot be said to be sufficient in light of the principles laid down in the aforementioned judgments and the lack of action and diligence on the part of the appellants imply that their actions lacked *bona fide*. Further, in view of lack of defence put forth by the appellants, the documents annexed by the respondent along with his plaint makes out a case for the grant of decree under Order XXXVII of the CPC.

62. The appellants ought to have explained explicitly the circumstances that led to such a huge delay and merely submitting that they were not aware about the summons and that their counsel was not available are not legally sustainable grounds. The present appeal is to be decided only within the parameters laid down by the Hon'ble Supreme Court in regard to the condonation of delay. In case there was no sufficient cause to prevent the litigant, i.e., the appellants to approach the learned Trial 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 tantamount to showing utter disregard to the legislative intent *qua* the provisions of summary suit.

63. Therefore, whilst relying upon various judgments, the learned Trial Court rightly rejected the application seeking condonation of delay in filing the application seeking leave to defend the summary suit and the decree drawn in terms thereof is in accordance with the law, and this Court does not find any perversity thereto.

64. Also, with regard to decreeing of the summary suit, this Court is of the opinion that since the appellants failed to put forth any defence against the suit, there was sufficient material before the learned Trial Court which makes out the case in favour of the respondent. The learned Trial Court in paragraphs no. 8 and 9 has mentioned that it has perused various documents such as bank statement of the respondent in respect of his savings bank account, cheque dated 1st August, 2018 bearing no. 000722 amounting to Rs.30,00,000/- issued by the appellant no. 1 in favour of the respondent, cheque returning memo dated 14th August, 2018, copy of complaint case bearing CC no. 4716/2018 filed by the respondent against the appellants under Section 138 of the Negotiable Instruments Act, 1881, legal demand notice dated 28th August, 2018, reply to the notice dated 18th September, 2019 and copy of the complaint dated 22nd September, 2018 made by the respondent against the appellants.

65. Rule 3 (6) of Order XXXVII of the CPC provides that if the defendant has not applied for leave to defend or if applied, such leave has been refused,



the plaintiff, in such cases, shall be entitled to judgment forthwith. Bearing in mind the above stated sub rule as well as the above stated facts and circumstances, the learned Trial Court was of the opinion that since the appellants had failed to apply for leave to defend the suit within the prescribed period, the averments made in the plaint are correct and accordingly, the afore mentioned summary suit was decreed in favour of the respondent.

66. In light of the foregoing discussions this Court is of the view that the decision of the learned Trial Court is in accordance with the statutory provision provided under Order XXXVII Rule 3 (6) which entitles a plaintiff to a judgment in the event a defendant fails to seek leave to defend the suit. This Court does not find any perversity either in applying the settled position of law or in ascertaining the facts of the case. Therefore, it is held that the same has been rightly adjudicated and the contentions of the appellants in this regard are rejected.

67. Conclusively, it is stated that as per the settled position of law, a party seeking condonation of delay in filing the leave to defend application has to explain delay of each day and assertion of certain bald and imaginary grounds cannot be considered sufficient for condonation of delay.

68. In the case at hand, the appellants/defendants, after receipt of summons for appearance in the prescribed format, entered appearance and were duly served meaning thereby they were fully aware of the implications of the provisions of Order XXXVII of the CPC and therefore, they cannot be allowed to urge that they did not know that the present suit filed by the



respondent/plaintiff was a summary suit under the above said provision. They were duly served with the summons of judgment at their address. It has been rightly held by the learned Trial Court that excuse of law cannot be taken as a 'sufficient cause' and this Court is inclined to uphold the said observation of the learned Court below as the appellants must be well aware of the provisions under law with regard to filing of an application seeking leave to defend within the stipulated period of ten days'.

69. This Court is further of the view that the delay in filing the leave to defend application within the stipulated time period was deliberate and a result of carelessness and utmost negligence on the part of the appellants. Therefore, the appellants have failed to make out any case whatsoever for condonation of delay in filing the application for leave to defend. Further, the appellants have been unable to put forth any propositions to contradict the findings of the learned Trial Court, whereby, the summary suit has been decreed in favour of the respondent. Taking into consideration the failure of the appellants to file their application seeking leave to defend, the learned Court below has rightly decreed the summary suit in terms of explicit statutory provisions provided under Order XXXVII Rule 3 (6) of the CPC.

70. In light of the above facts and circumstances, this Court upholds the impugned judgment and decree dated 10th February, 2020, passed by the learned District & Sessions Judge (North), Rohini Courts, Delhi in CS DJ no. 77/2019.

71. Accordingly, the instant appeal stands dismissed, along with pending applications, if any.



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72. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 30, 2024
dy/ryp/da

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 02.05.2024
19:34:52

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