



2024:DHC:1197



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

% **Date of order : 6<sup>th</sup> February, 2024**

+ RFA 138/2021, CM APPL. 8029/2021, CM APPL. 8032/2021 & CM APPL. 21242/2021

SMT BITTOO ..... Appellant

Through: Mr.Pradeep Kar, Mr.Umesh Kumar  
and Mr.Rakesh Kumar, Advocates

versus

SMT SANTOSH & ORS. .... Respondents

Through: Dr.V.P.Singh, Mr.Abhay Sagar,  
Mr.Yashasvi Singh and Mr.Ashish  
Bharti, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

**CM APPL. No. 8030/2021(Condonation of delay in filing)**

1. The instant application has been filed on behalf of the applicant/appellant under Section 5 read with Section 151 of the Code of Civil Procedure, 1963, ("CPC" hereinafter) seeking the following reliefs:

*"(a) Allow the present application for condonation of delay and condoned the delay of 955 days in filing of the present appeal.  
(b) Pass any other order or direction keeping in view the facts of the present case in favour of the Appellant and against the Respondents."*



2. The applicant/appellant has filed the accompanying Regular First Appeal (“RFA” hereinafter) challenging the decree dated 10<sup>th</sup> April, 2018, passed by the learned Trial Court wherein a decree of possession was passed in favour of respondent no.1 herein, thereby, directing the defendants therein to vacate and handover the actual physical possession of the Suit property. Further, the learned Trial Court also passed a decree of permanent injunction in favour of the respondent no.1 herein, thereby, restraining the defendants from selling, transferring, alienating, and /or parting with the possession of the said Suit property.

3. The applicant/appellant has filed the instant application seeking condonation of delay of 955 days in filing the accompanying RFA.

4. Learned counsel appearing on behalf of the applicant/appellant submitted that the instant application has been filed with *bona fide* intentions and there is a sufficient cause on the part of the applicant/appellant for condonation of delay.

5. It is submitted that the respondent no.1 filed an Execution Petition dated 5<sup>th</sup> July, 2018, before, thereafter in furtherance to which a notice was issued to the applicant/appellant. Further, the applicant/appellant preferred an application dated 27<sup>th</sup> October, 2018, under Order IX Rule 13 of the CPC for setting aside of the *ex-parte* decree, which was subsequently dismissed vide order dated 2<sup>nd</sup> February, 2019.

6. It is submitted that the applicant/appellant is an illiterate woman and no person from her family is literate to an extent that they could understand the court proceedings therefore, the applicant/appellant had to rely upon her



advocate to guide her through the process, who failed to render appropriate advice.

7. It is submitted that considering the inability on the part of the applicant/appellant's previous counsel, she approached the present counsel to represent her case before this Court. The present counsel after his engagement, inspected the case files, procured the certified copies of the case and preferred the instant appeal without any more delay.

8. It is submitted that the delay in filing of the instant appeal is neither intentional nor deliberate rather the same has been preferred with a *bona fide* intention as the applicant/appellant has always appeared before this Court whenever she was summoned.

9. Therefore, in view of the foregoing submissions, it is submitted that the instant application for condonation of delay may be allowed and the delay may be condoned.

10. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant application submitting to the effect that the same is liable to be dismissed being filed at a belated stage.

11. It is submitted that the applicant/appellant by way of the instant application are merely abusing the process of law and have not approached this Court with bona fide intentions.

12. It is submitted that the applicant/appellant preferred an application dated 27<sup>th</sup> October, 2018, under Order IX Rule 13 of the CPC for setting aside of the *ex-parte* decree, after a lapse of more than six months from the date of passing of the impugned decree. Subsequently, the said application



was dismissed on 2<sup>nd</sup> February, 2019, to which no appeal was filed by the applicant/appellant.

13. It is submitted that the applicant/appellant preferred an objection to the execution petition on 22<sup>nd</sup> February, 2019, which came to be dismissed on 18<sup>th</sup> January, 2021, and no appeal was preferred against it by applicant.

14. It is submitted that the applicant/appellant has not approached this Court with clean hands by concealing the facts that she appeared before the learned Trial Court a couple of times namely on 13<sup>th</sup> January, 2015, 9<sup>th</sup> June, 2017 and 22<sup>nd</sup> August, 2017, hence, the applicant was aware of the ongoing proceedings.

15. It is submitted that the applicant/appellant was granted an *ex-parte* stay order from this Court *vide* order dated 26<sup>th</sup> February, 2021, which is bad in law as the delay of 955 days for filing of the accompanying RFA has not been condoned by this Court.

16. In view of the foregoing submissions, the learned counsel submitted that the delay may not be condoned and accordingly, the instant application being devoid of any merits, is liable to be dismissed.

17. Heard the learned counsel appearing on behalf of the parties and perused the record.

18. In light of the above, it is imperative to discuss the nature of delay, limitation provision provided under the Limitation Act, 1963 (“the Act” hereinafter) and also state the law as settled by the Hon’ble Supreme Court and various High Courts, with regards to condonation of delay in filing of an appeal.



19. The legislature has conferred upon the Courts, discretionary powers to condone delays as per Section 5 of the Act, in order to do complete justice to the case of the parties under exceptional circumstances. Therefore, it is necessary to discuss the said provisions wherein extension may be granted if the Court is satisfied that there exists a sufficient cause for such delay.

20. Section 5 of the Act provides for extension of the prescribed period of limitation for filing an application under any provision except Order XXI of the CPC thereby, vesting discretionary powers to the Court to entertain an appeal that has transgressed the prescribed period of limitation by condoning the delay. The said provision is reproduced herein below:

***“Section 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 misled 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.”*

21. Upon perusal of the aforesaid Section it can be clearly noted that the provision provides for a necessary condition i.e., “sufficient cause” in order to adjudicate upon whether or not the prescribed period of limitation shall be extended or not. Therefore, the appellant must first satisfy this Court that



there arose a “sufficient cause” for delay in not preferring the instant Appeal within the prescribed period stated in this regard.

22. The phrase “sufficient cause” as provided for in the aforementioned Section has been interpreted in different light by different Courts and one common observation is that the parameters for what constitutes sufficient cause cannot be conclusively laid down and hence, each case is different and has to be dealt with on its own merit and under the prevailing circumstances.

23. In light of the same, this Court deems it necessary to discuss the settled position of law, as observed by the Hon’ble Supreme Court with respect to how a Court may deal with an application for condonation of delay under Section 5 of the Act.

24. The Hon’ble Supreme Court in ***Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81***, dealt with the expression ‘sufficient cause’ as provided under Section 5 of the Act and held that the said expression must be construed liberally in order to advance justice and delays in preferring appeals maybe condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking such relief. The relevant paragraph is reproduced herein below:

*“11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC*



100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

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

*13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:*

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

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



*Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510], Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)*

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

25. The Hon’ble Supreme Court in ***Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39*** further elucidated the interpretation of Section 5 of the Act. The relevant paragraph is reproduced herein below:

*“7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation*



*to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan [(1890) 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.”*

26. The above stated judgements have been referred to by the Hon’ble Supreme Court in its recently in its judgment **Civil Appeal no. 7696 of 2021** titled ***Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors.*** dated **December 16, 2021**, wherein the consideration of the Hon’ble Court was based upon inter alia the principles discussed in the aforesaid judgments.

27. Hence, from the foregoing discussion, it can summed up that the statute of limitation is founded on public policy, with an aim to suppress fraud, perjury and to prevent oppression. The foundation is to bury all concluded acts of the past which have from lapse of time become stale and rather aims to quicken diligence and restore public peace.

28. Further, the phrase “sufficient cause” must be inferred in a liberal manner so as to ensure that substantial justice is done, but only to an extent



where inaction, negligence, or lack of bona fides cannot be imputed to the party seeking condonation of delay. Tersely said, the applicant must be able to show adequate and bona fide reasons which prevented him to approach the court within limitation to make out a case for condonation of delay.

29. Now advertng to the facts of the instant RFA.

30. The instant RFA has been filed against the decree dated 10<sup>th</sup> April, 2018, wherein the learned Trial Court passed a decree of possession in favour of respondent no.1 herein, thereby, directing the defendants therein to vacate and handover the actual physical possession of the Suit property. Further, the learned Trial Court also passed a decree of permanent injunction in favour of the respondent no.1 herein, thereby, restraining the defendants from selling, transferring, alienating, and /or parting with the possession of the said Suit property.

31. It is an admitted position on part of the appellant that the instant RFA is barred by an extraordinary delay of 955 days therefore, this Court has to adjudicate upon whether the reasons stated in the application for condonation of extraordinary delay in filing the instant RFA are justified and establish sufficient cause in this regard.

32. The impugned decree was passed by the learned Trial Court vide order dated 10<sup>th</sup> April, 2018, whereas the applicant preferred the instant RFA on 22<sup>nd</sup> February, 2021, therefore, the total duration of delay is 955 days, excluding the period of COVID-19 in *Suo Moto Writ Petition (Civil) No.3/2020*, as exempted by the directions of the Hon'ble Supreme Court.



33. This Court has to carefully examine the reasoning specified by the appellant while condoning an inordinate delay of 955 days in filing the instant RFA. Therefore, the reasons specified by the appellant in the application are reproduced herein below:

*“9. On 27.10.2018, the plaintiff filed an application under Order 9 Rule 13 CPC for setting aside ex-parte decree. The same was dismissed on 02.02.2019.*

*10. Thereafter on 05.07.2018, the Respondent filed Execution Petition and notice was issued to the Appellant.*

*11. The Appellant appeared before the executing court on 29.10.2018 and filed stay application u/s.151 CPC stating that Appellant filed an application under Order 9 Rule 13 CPC.*

*12. After dismissal of said application under Order 9 Rule 13 CPC, the Appellant filed an objection to execution on 22.02.2019 and same was also dismissed on 18.01.2021.*

*13. It shows that whenever the "Summon" received from the court, the Appellant appeared before the Court and showed her seriousness about her case.*

*14. The Appellant is illiterate, innocent and poor person. She has three sons namely Raju, Shayambir and Satbir. Raju and Shyambir are illiterates whereas Satbir is 9th pass.*

*15. Therefore, the Appellant is not aware of court proceedings and its consequences. She used to depend on her advocate for legal advice. The counsels were engaged on the several stages of the proceedings but they didn't provide proper legal advice and even not disclosed the consequences of non-appearance in the matter.*



*16. In February'2021, her earlier counsel showed his inability to do good for the appellant. The appellant approached to present counsel and engaged him for further proceedings.*

*17. The Present counsel inspected file and applied for certified copy and receiving the documents and after doing needful in said appeal filed the same without lapsing much time before this Hon'ble Court. As such, the delay was not due to the carelessness or negligence on the part of the applicant/appellant.”*

34. The applicant/appellant has submitted that she had preferred various applications before the learned Trial Court, challenging the execution petition and setting aside of the ex-parte decree, hence, it is in such light that the instant RFA was filed after a delay of 955 days. It is also contended that another reason for such delay is due to her receiving ill advice from her advocate.

35. On perusal of the facts leading to filing the instant application for condonation of delay and the averments made thereto, it is apparent that the applicant/appellant never intended to pursue the matter and filed the application dated 27<sup>th</sup> October, 2018, before the learned Trial Court under Order IX Rule 13 of the CPC for setting aside of the *ex-parte* decree, after a lapse of 200 days from the date of passing of the impugned decree. The applicant/appellant neither took any steps to prefer the available recourse in law, nor gave any sufficient and reasonable explanation of such laxity.

36. In this backdrop, this Court is of a considered view that the objective behind providing legal remedies is to ensure that the damage caused by legal



injuries can be cured. The law of limitation prescribes a time span against such legal remedies during which the aggrieved party may file a redressal and challenge the same. The provisions provided for limitation are not prescribed to destroy the rights of the parties rather they aim to restrict dilatory tactics adopted by parties.

37. The Court further observes that it is in this regard that the foundation of the legal maxim *interest reipublicae up sit finis litium*, is propounded. The aforesaid maxim simply means that it is for the general welfare that a period be put to litigation hence, the idea is to keep a remedy alive only for a legislatively fixed period of time.

38. Furthermore, inordinate delay in filing an appeal must not be condoned as matter of routine and rather must be based upon sound reasoning. The intent behind the principle of condonation of delay is to cater to genuine cases and should not be extended to a person who is oblivious to his rights and entitlements. Therefore, a person must state a sufficient cause which is founded upon *bona fides* and is well-reasoned.

39. Applying the law laid down by the Hon'ble Supreme Court in the judgments discussed above to the facts of the instant case and considering the averments made in the application for condonation of delay under Section 5 of the Act, this Court is of the view that the applicant has not been able to establish sufficient cause for condoning the delay of 955 days in preferring the instant RFA.



40. In view of the aforementioned reasoning, this Court does not find any merit in the instant application preferred for condonation of delay of 955 days in filing the captioned RFA.

41. Therefore, the appellant has not been able to put forth sufficient reasons to make out a *bona fide* case for condonation of delay.

42. Accordingly, the instant application stands dismissed.

### **RFA 138/2021**

43. The instant regular first appeal under Section 96 read with Order XL Rule 1 of the Code of Civil Procedure praying for the following reliefs:

*“a) The Final Order and Judgment dated 10.04.2018, passed in Civil Suit no. 96048/16 New no. 856/2018 titled as Smt. Santosh versus Sh. Hori Lal & Ors, by Sh. Harish Kumar, ADJ, Central Delhi, Tis Hazari Court, Delhi, Delhi be set aside.*

*b) Pass any other order or direction keeping in view the facts of the present case in favour of the Appellant and against the Respondents.”*

44. In light of the order of the even date passed in CM APPL. 8030/2021 (*delay in filing*), the instant RFA stands dismissed along with pending applications, if any.

45. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**FEBRUARY 6, 2024**

dy/da/db

*Click here to check corrigendum, if any*