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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 12.07.2024

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RFA(COMM) 231/2023 and CM APPL.53957/2023**M/S MAYA RAM KRISHAN LAL JAIN AND ANR.Appellants****Through: Mr.Sanjay Kumar, Advocate for
appellant no.1.****Mr.Bharat Arora and Mr.Lakshay
Raheja, Advocates for appellant No.2.****versus****M/S SHRI BISHAN DASS TRADERS AND ORSRespondents****Through: Mr.Tushar Rohmetra, Advocate.****CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)****CM APPL.53956/2023 (condonation of delay of 130 days)**

1. This application is filed by the appellants seeking condonation of 130 days delay in filing the above-captioned appeal. The appellants impugn a judgment and decree dated 27.03.2023. The date of filing of the appeal as reflected in the logs of this Court is 13.10.2023. It does appear that the delay in filing the present appeal exceeds 130 days.

2. The averments made in the present application seeking condonation of delay are also inconsistent with the prayers in regard to the period of delay. Although, in paragraph nos.4 & 5 of the application, it is stated that the delay is of 135 (one hundred and thirty-five) days, the prayer is made for condonation of delay of 130 (one hundred and thirty) days in filing the



present appeal.

3. The only explanation provided by the appellants for seeking the condonation of delay in filing the appeal reads as under: -

“3. That the impugned order was passed on 27.03.2023 and due misplacement of the case file with the earlier counsel, the First appeal in the present matter could not be filed in time and the appellant was in distress and ultimately the appellant engaged a new counsel who got the file restored again from bit and pieces, so there was a delay in filing the same due to these cumulative reasons.

4. That the delay of 135 days in filing the appeal was neither intentional nor deliberate but due to the bonafide reasons as mentioned above.”

4. No particulars as to when the case file was misplaced or the immediate steps taken by the appellants to reconstruct the same have been stated in the application. It merely states that the appellants were distressed and engaged a new counsel. Bereft of any specific particulars, we are unable to accept the inordinate delay of 130 days – which exceeds the time available for filing the appeal more than twice over – can be condoned. We are unable to accept that the appellants have set out any justifiable explanation, which prevented them to file the appeal within the prescribed time.

5. In ***Government of Maharashtra (Water Resources Department) Represented By Executive Engineer v. M/s Borse Brothers Engineers and Contractors Pvt. Limited : (2021) 6 SCC 460***, the Supreme Court has made observations to the effect that the approach of the Court for condoning the



delay in matters involving commercial disputes under the Commercial Courts Act, 2015 should not be unduly elastic. The relevant extract of the said decision is set out below: -

“58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims...

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63. Given the aforesaid principles culled out re “sufficient cause” and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, it is held that for appeals under Section 37 of the A&C Act, 1996 that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule....”

6. As noted above, the present application sets out no credible reason for explaining the delay in filing the present appeal.

7. The learned counsel for the appellants referred to the decision of Bombay High Court in ***CEAT Limited v. Viren Mishra: 2024 SCC OnLine Bom 2068*** and the decision of Kerala High Court in ***Muhammed Shafeek v M/s. Tasty Nut Industries & Others: Coml. Appeal No.3/2023 decided on 17.10.2023*** in support of their contention that the delay is liable to be condoned.

8. In ***CEAT Limited v. Viren Mishra (supra)*** the Bombay High Court



rejected the contention that Section 5 of the Limitation Act, 1963 was inapplicable in the matters under Section 13A of the Commercial Courts Act, 2015. The Court further examined the reasons for the delay and was persuaded to condone the delay of 156 days in payment of cost. There is no cavil that this Court does have the powers to condone the delay in filing the appeal under Section 13A of the Commercial Courts Act, 2015. However, the delay in filing such an appeal cannot be condoned mechanically, the reasons for delay must be genuine and persuasive. The court must be satisfied that the appellant was prevented from sufficient cause in filing the appeal within the statutory period. Thus, the decision in ***CEAT Limited v. Viren Mishra*** (*supra*) is of little assistance to the appellant.

9. In ***Muhammed Shafeek v M/s. Tasty Nut Industries & Others*** (*supra*) the Court had condoned the delay of 25 days in filing the appeal. The Court had referred to the decision of the Supreme Court in ***Esha Bhattacharjee v Managing Committee of Raghunathpur Nafar Academy & Ors: (2013) 12 SCC 649***, wherein the Supreme Court held that the ‘sufficient cause’ should be understood in their proper spirit, philosophy and purpose and are elastic. However, in the context of the appeal under Section 13A of the Commercial Courts Act, 2015, the Supreme Court has expressly held that the expression ‘sufficient cause’ is not elastic enough to cover inordinate unexplained delays. The approach of the Court ought to conform with the legislative intent that seeks to impose more rigid timelines in matters involving a commercial dispute.

10. In view of the above, we find no merits in the application seeking condonation of inordinate delay in filing the appeal. The application is thus,



dismissed.

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11. In view of the rejection of the condonation of delay application, the appeal is dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 12, 2024

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