



2024:DHC:9014



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 21.11.2024*+ **RFA 873/2023, CM APPL. 55240/2023 & 55241/2023****AJAY AGGARWAL (SINCE DECEASED) THROUGH HIS LRS****.....Appellants****Through: Mr. Rajan Chaudhary, Advocate****versus****M/S BRITANNIA INDUSTRIES LTD****.....Respondent****Through: Mr. Sarfaraz Khan, Advocate****CORAM: JUSTICE GIRISH KATHPALIA****J U D G M E N T (ORAL)****CM APPL. 55240/2023 (for condonation of delay of 350 days in filing) & CM APPL. 55241/2023 (for condonation of delay of 101 days in re-filing)**

1. The appellants, being legal representatives of the original plaintiff substituted the plaintiff before the trial court after his death. The suit for recovery of Rs. 7,48,874.89 with interest was partly decreed for a sum of only Rs. 79,846.85 with interest. Hence the present appeal by the appellants, claiming the entire suit amount.

2. The impugned judgment and decree being dated 13.12.2021, the prescribed period of limitation to file appeal expired on 15.03.2022, but the

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appeal was filed on 27.02.2023. Even thereafter, more than 100 days were spent by the appellants on rectification of defects raised by the Registry.

3. By way of the present applications, the appellants seek condonation of delay of 350 days in filing the appeal and 101 days in re-filing the appeal. Reply to the application has already been filed. I have heard learned counsel for both sides.

4. The delay in filing the appeal has been explained in completely vague manner, stating that the appellants had no knowledge about the case. It would be apposite to extract the relevant portion of the delay condonation application, which is as follows:

“c) Because the Applicant was having no knowledge of proceedings or the judgement passed by the Ld. Trial Court till he received an email from the Opposite Counsel on 3rd January 2023. It is stated that even on that the applicant / accused was not aware of the legal requirements that he ought to have challenged the order and Judgment dated 13.12.2021 as he never appeared before the Hon'ble Court and only his father appeared through his Counsel and he was having no knowledge of the said case and was not even aware about the limitation period and legal proceedings.

d) Because the delay in challenging the order dated 13/12/2021 is due the reason that the applicant was never apprised by the order dated 13/12/2021 as he never appeared in the court case.

e) Because the Legal Heirs / Applicant were in deep trauma after the demise of their father and it took them months to settle all the business work and their life.

f) Because the applicant shall suffer irreparably in case if the delay in filing the appeal is not Condoned and further, he shall be forced to face the consequences of the loss at their business.

g) Because the Applicant bonafidely believed that the case is still pending and the judgment has not been passed and as soon as he went through the email of the Opposite Counsel, They immediately approached their Counsel in the month of February 2023 and since then it was lying under



the Objections before the Registry and soon after the objections the Counsel for the Appellant applied for the Certified Copy of the Case and the same was delivered in the month of March but due to some medical difficulties with the counsel for the Appellant the appeal could not be filed on time therefore the Appellant is Approaching the Hon'ble High Court by the way of this present appeal."

5. Learned counsel for respondent submits that the respondent has been repeatedly sending emails to the appellants with the request to accept the entire decretal amount, but to no avail and even before the learned trial court, the respondent filed application in that regard but the appellants opted not to accept the decretal amount.

6. As regards delay in filing the appeal, the only submission made by learned counsel for appellants today is that the appellants were not aware that they had to file an appeal challenging the impugned judgment and decree. But admittedly, it is the same learned counsel (*appearing today*), who was counsel for the appellants throughout the trial and even thereafter till date. It is not a case of some previous/other counsel committing any professional misconduct.

7. It would be apposite to briefly traverse through the legal position on the scope of Section 5 Limitation Act.

7.1 In the case of **Ramlal vs Rewa Coalfields Ltd.**, AIR 1962 SC 361, the Hon'ble Supreme Court of India observed thus :

"7. In construing Section 5(of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration 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 the 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 upon the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.***

(emphasis supplied)

7.2 In the case of ***Finolux Auto Pvt. Ltd. Vs Finolex Cables Ltd.***, 136(2007) DLT 585(DB), a Division Bench of this Court held thus :

*“6. In this regard, we may refer to a decision of the Supreme Court in **P.K. Ramachandran vs State of Kerala**, IV(1997) CLT 95 (SC). In the said decision, the Supreme Court has held that **unless and until a reasonable or satisfactory explanation is given, the inordinate delay should not be condoned.** In para 6 of the judgment, the Supreme Court has laid down in the following manner :*

*“**Law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.** The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.”*

(emphasis supplied)

7.3 In the case of ***Pundlik Jalam Patil (dead) by LRs vs Executive Engineer Jalgaon Medium Project***, (2008) 17 SCC 448, the Hon'ble Supreme Court of India held that basically the laws of limitation are founded on public policy and the courts have expressed atleast three different reasons



supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, and (iii) that persons with good causes of action should pursue them with reasonable diligence. It was observed that the statutes of limitation are often called as statutes of peace in so far as an unlimited and perpetual threat of limitation creates insecurity and uncertainty which are essential for public order.

7.4 In the case of ***Lanka Venkateshwarlu vs State of Andhra Pradesh***, (2011) 4 SCC 363, the Hon'ble Supreme Court of India observed thus :

“19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country including this court adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act”.

The concepts of “liberal approach” and “reasonableness” in the exercise of discretion by the courts in condoning delay were considered by the Hon'ble Supreme Court of India in the case of ***Balwant Singh vs Jagdish Singh***, (2010) 8 SCC 685, holding thus :

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction is normally to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the rights and obligations of party to arise. These principles should be adhered to and applied appropriately depending upon the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of failure of the other party to explain the delay by showing sufficient cause and its



own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27.

28. *The concepts such as “liberal approach”, “justice oriented approach” and “substantial justice” cannot be employed to jettison the substantial law of limitation. Especially in cases where the court concludes that there is no justification of the delay....”*

(emphasis supplied)

7.5 In the expressions of this Court in the case of ***Shubhra Chit Fund Pvt. Ltd. vs Sudhir Kumar***, 112 (2004) DLT 609, too much latitude and leniency will make provisions of the Limitation Act otiose, which approach must be eschewed by courts. In the case of ***Union of India vs C.L. Jain Woolen Mills Pvt. Ltd.***, 131 (2006) DLT 360, one of the arguments of the applicant Union of India seeking condonation of delay in filing the appeal was that the power to condone delay has been conferred to do substantial justice and the court should adopt a liberal approach and the delay resulting from official procedures should normally be condoned. This Court rejected the argument, placing reliance on the judgment in the case of ***P.K. Ramachandran*** and observed that although the provisions under Section 5 Limitation Act have to receive liberal construction, but the court cannot ignore the fact that where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner without disclosure of good and a sufficient cause for condonation of delay.



8. Falling back to the present case, as reflected from above extract of the delay condonation application, the appellants have sought to explain the delay in filing the appeal on the grounds that they were not aware about the proceedings; that subsequent to the Registry of this High Court raising defects, the appellants applied for the certified copies, which were received by them in the month of March; that thereafter, due to “some medical difficulties” of the counsel, the appeal got delayed.

8.1 As mentioned above, the appellants continue to be represented by the same counsel, who represented them before the trial court and in his submissions, learned counsel for appellants did not submit even a whisper as to why he did not apprise the appellants regarding the period prescribed for filing the appeal. So far as the time taken in obtaining certified copies is concerned, even according to the appellants’ own case, they applied for certified copies of the impugned judgment and decree only subsequent to the expiry of period of limitation to file appeal and even otherwise, no specific dates have been disclosed by the appellants as regards filing of the application for certified copies and receipt thereof. Similarly, the illness of the learned counsel also took place subsequent to filing of the appeal and not a shred of medical record in this regard has been filed.

8.2 It is trite that delay of decades can be condoned if the court is satisfied about sufficiency of cause of delay and on the other hand, condonation of delay of even a few days can be declined where the court is not so satisfied. What has to be seen is as to whether the applicant seeking condonation of



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delay was prevented by a cause beyond his control from filing the concerned proceedings within period prescribed by law.

8.3 In the present case, I am unable to satisfy myself that the appellants were prevented from filing the appeal in time by any factor beyond their control. The appellants have clearly failed to set up sufficient cause explaining the delay in filing the appeal, so the delay cannot be condoned.

9. Therefore, the application for condonation of delay in filing the appeal is dismissed. That being so, the application for condonation of delay in re-filing the appeal also has to be dismissed.

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10. Consequently, the appeal is dismissed as time barred.

GIRISH KATHPALIA, J

NOVEMBER 21, 2024/rk/ry

Click here to check corrigendum, if any

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