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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(COMM) 106/2022 CM APPL. 52047/2022**
RAJEEV SAUMITRA & ORS. APPELLANTS
Through: Ms.Jasmine Damkewala, Advocate.
versus
ANIL KUMAR ANAND RESPONDENT
Through: Mr.Nikhil Kumar Dogra, Mr.Vipin
Kumar Sharma, and Mr.Ramesh
Chandra Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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21.03.2024

CM APPL. 19734/2023 (for delay condonation)

1. This is an application filed on behalf of the appellants seeking condonation of delay of 212 days in filing the above captioned appeal.
2. The appellants (5 in number) have preferred the above captioned appeal impugning a judgment and decree dated 01.12.2021 (hereafter *the impugned judgment*) passed by the learned Commercial Court in CS (COMM) No.280/2019 captioned *Shri Sunil Kumar Anand v. Shri Rajeev Saumitra & Ors.* In terms of the impugned judgement, the learned Commercial Court had passed a decree of ₹69,93,701/- with costs in favour of the respondent (plaintiff) and against the appellants along with interest at the rate of 8% per annum from the date of filing of the suit till the date of realisation of the said amount.
3. The respondent had preferred the said suit being CS (COMM) No.280/2019 seeking recovery of a sum of ₹69,93,701/- against the



appellants on account of non-payment for the services rendered to the appellants who were engaged in running various coaching institutes across Delhi. The respondent claimed that he had entered into a separate contract with appellant no.2 (Paramount Coaching Centre Private Limited). He claimed that he had supplied books, study material, newsletter etc. for the coaching classes. Although, the appellants had discharged the consideration partially, the entire consideration for the same was not paid. The learned Commercial Court after examining the evidence found that the appellants were liable to pay the amount as claimed by the respondent.

4. The present appeal was required to be filed within sixty days from the date of the impugned judgment, that is, 01.12.2021. However, the appellants claim that in terms of the order dated 10.01.2022 passed by the Supreme Court in *In Re: Cognizance for extension of limitation Suo Motu W.P.(C) No.03/2020*, the said period stood extended by ninety days from 01.03.2022. The present appeal was filed on 14.11.2022

5. The learned counsel appearing for the respondent submits that the period of ninety days from 01.03.2022 would be available only in cases where the period of limitation is otherwise more than the said period. He submits that the import of the order passed by the Supreme Court could not be read to extend the period of limitation from sixty days to ninety days after the period during which COVID wave was over.

6. We are unable to agree with the aforesaid contention. A plain reading of the order dated 10.01.2022 does indicate the period for limitation for filing the appeal stood extended for a period of ninety days from 01.03.2022.



The relevant extract of the order dated 10.01.2022 passed by the Supreme Court in *Suo Motu W.P.(C) No.03/2020* is set out below:-

“5. III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

7. If the benefit of further ninety days from 01.03.2022 is accorded to the appellants, the present appeal ought to have been filed by the appellants on or before 31.05.2022. However, as noted above, the present appeal was filed on 14.11.2022, that is, after a delay of one hundred and sixty-seven days.

8. The appellants have filed an application seeking condonation of delay in filing the present appeal. The explanation provided by the appellants in the said application for the said delay reads as under: -

“5. That thereafter, the Appellant set about to file the Appeal but was facing huge financial losses due to lockdown on account of Covid-19 pandemic. The Appellant could consequently, neither afford the Court Fee nor litigation charges. The Appellant requested the erstwhile counsel to file the Appeal but the same remained pending for days. In the meantime, the Appellant became inundated in litigations with the estranged wife of the Appellant No 1 and could not adequately pursue the present Appeal. It was during the Audit in November 2022 that the Appellant was informed by the Accountant that this Appeal remained to be pending. Accordingly, the Appellant immediately reached out to the in-house counsel who had not been diligent and let this slip. The Appellant accordingly, immediately consulted a lawyer and urged the Appeal with deficit Court Fee and later



remitted the Court Fee once the financial condition somewhat improved.”

9. It is apparent from the above that the appellants have sought to explain the delay on two grounds. First, account of financial difficulty; second, on account of lack of diligence on the part of the counsel.

10. The application proceeds on the basis as if the appellants are a single person. However, it is noticed that appellant nos.2 and 5 are companies and appellant no.1 is one of the directors of those companies. The constitution of appellant nos.3 and 4 is not disclosed. However, they have filed the present appeal through appellant no.1. It appears that the said appellants are sole proprietorship concerns. Thus, in fact appellant nos.1, 3 and 4 are the same individual.

11. In so far as financial difficulty is concerned, it is difficult to accept that the same can be accepted as a ground for such inordinate delay. In any view, no material has been placed on record to indicate that the appellants had no funds available for payment of the Court Fee or the litigation charges. There is also no material to indicate that any efforts were taken by the appellants at the material time, which were frustrated for want of funds. The other grounds urged by the appellants also indicate that the lack of funds was not a determinative factor.

12. The application further indicates that sometime in November, 2022 the appellants were informed by the accountant that the appeal had remained pending.

13. It is difficult to accept the said explanation as provided by the



appellant for the delay in filing the appeal. Appellant nos.1,3 and 4 is the same person and admittedly he was aware about the time limit for filing the appeal. Appellant no.1 is also director of appellants no.2 and 5. Further, it is also claimed that he had instructed the advocate to file the appeal, the explanation that he was reminded by the accountant that the appeal was not filed or his in-house counsel was not diligent, is not persuasive.

14. The delay in filing the present appeal is almost thrice the initial time available for filing an appeal even after benefit of the order passed by the Supreme Court for extension of time, is extended to the appellants.

15. In ***Government of Maharashtra (Water Resources Department) Represented By Executive Engineer v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.: (2021) 6 SCC 460***, the Supreme Court observed as under: -

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 pressing negligent and stale claims.

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63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1A) 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..”



16. The object of the Commercial Courts Act, 2015 is to ensure expeditious disposal of the matters involving commercial disputes. The legislative policy no longer permits countenancing lackadaisical approach in pursuing such litigation. The timelines as provided in the Commercial Courts Act, 2015 are required to be complied with.

17. Given that the dispute involved is a commercial dispute, it would not be apposite for the Court to adopt a liberal approach to condone the delay as same would frustrate the legislative intent of ensuring an expeditious conclusion of the commercial disputes.

18. In view of the above, the present application is rejected. Consequently, the appeal is also rejected as barred by limitation. Pending application also stands disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 21, 2024

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Click here to check corrigendum, if any