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

+ **RFA(COMM) 284/2023 and CM Nos.62812/2023**

**G. K. DAIRY & MILK PRODUCTS
PRIVATE LIMITED**

..... Appellant

Through: Mr Siddhartha Patra, Advocate.
versus

ASHOK SONI

..... Respondent

Through: Mr Rajesh Mahindru, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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07.02.2024

CM No.62814/2023

1. The appellant has filed the present appeal impugning an order dated 15.05.2023 (hereafter '**the impugned order**') whereby the respondent's application under Order XIII A of the Code of Civil Procedure, 1908 was allowed and the suit preferred by the respondent [*CS(COMM) 388/2020* captioned *Ashok Soni v. G.K. Dairy & Milk Products Private Limited*] was decreed for an amount of ₹7,98,735/- along with interest at the rate of 18% per annum.
2. In addition, the learned Commercial Court had also awarded cost of ₹15,000/- and permitted recovery of court fees of ₹10,152/-.
3. It was open for the appellant to file an appeal within a period of sixty days from the said impugned order. However, the present appeal was filed on 20.11.2023. The appellant has filed an application (CM No.62814/2023) under Section 5 of the Limitation Act, 1963 praying that a delay of 32 days in filing the present appeal, be condoned.



4. The delay in filing the present appeal is not thirty two days but one hundred and ninety days. However, the learned counsel for the appellant insists that the delay in filing the appeal is only thirty-two days as according to him, the impugned order was not pronounced on 15.05.2023. He states that, as per his information, the impugned order was typed sometime in August, 2023 and he has, accordingly, calculated the period of delay from August 2023. He states that the appellant had applied for a Certified Copy of the impugned order on 02.08.2023 and the same was made available on 19.08.2023.

5. The learned counsel appearing for the respondent disputes the aforesaid contention. He states that the respondent had applied for a certified copy of the impugned order and the same was made available on 15.06.2023. He states that he is carrying the said certified copy and craves leave to file the same, if necessary. The learned counsel for the appellant is unable to dispute the said assertion.

6. In view of the above, we are unable to accept the appellant's contention that the impugned order was not available to the appellant prior to August, 2023. There is also no material on record to indicate that the impugned order was not pronounced on 15.05.2023 but was typed much later. The said contention is clearly belied by the fact that the respondent had received the Certified Copy of the impugned order on 15.06.2023.

7. In any view of the matter, nothing prevented the appellant from immediately applying for a certified copy of the impugned order as the period for providing the same would be excluded for the purpose of determining whether the appeal was filed within limitation.



8. The period of sixty days available for the appellant to file the appeal expired on 15.07.2023. The period of delay in filing the appeal is required to be calculated from 15.07.2023 to 20.11.2023. However, the period of seventeen days for making the Certified Copy available to the appellant is required to be excluded from the said period. Thus, in effect, the present appeal has been filed after a delay of one hundred and twelve days.

9. The explanation provided by the appellant for seeking condonation of the delay in filing the present appeal reads as under:

“3. That the Applicant / appellant is filing the present appeal in delay of 32 Days due to the impugned order and decree was not available online as well as physically / certified copy as the order was typed late, then the appellant started the process of filing the present appeal and obtained the certified copy of the impugned order and decree date 15.05.2023.”

10. We find that there is no credible explanation provided by the appellant for justifying the delay in filing the present appeal. The appellant has, clearly, failed to show ‘sufficient cause’ which prevented the appellant from filing the appeal within the stipulated period.

11. 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 had explained that the expression ‘sufficient cause’ in the context of commercial disputes would not be elastic enough to accommodate inordinate delays. 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 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....”

12. In view of the above, it would not be apposite for this Court to adopt a liberal approach in condoning the delay in matters involving commercial disputes.

13. The application is, accordingly, dismissed. Consequently, the above-captioned appeal is also dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 07, 2024
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