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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 176/2024 and CM APPLs.46913/2024,**
47984/2024

PAWAN KUMAR GOEL

.....Appellant

Through: Mr. Vivek Ranjan Tiwari and Mr.
Rinku, Advs.

versus

DR. DHAN SINGH & ANR.

.....Respondents

Through: Mr. Vaibhav Vutts, Ms. Aamna
Hasan and Ms. Anupriya Shyam,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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23.09.2024

CM APPL.46912/2024 (delay of 85 days)

1. This is an application filed by the appellant praying that the delay of eighty-five days in filing the present appeal be condoned. The appellant has filed the present appeal impugning an order dated 14.03.2024, passed by the learned Single Judge whereby the appellant's application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, was rejected.
2. The appellant (plaintiff in the suit) had filed the aforementioned application, *inter alia*, praying that the defendants (respondents herein) be restrained from using, making, selling, exporting, distributing, advertising or taking any steps for manufacturing and dealing in any product including but not limited to "*Alpha Yohimbine extracted from Rauwolfia Tetraphylla/Rauwolfia Canescens with purity greater than 90%*".
3. The appellant claims that the defendants are infringing its Indian



Patent (IN 369150), which is related to the process for extraction of the aforementioned compound.

4. The explanation provided by the appellant seeking condonation of delay is, essentially, three-fold. First, he submits that the appellant is the sole proprietor of his business. He is of an advanced age and he travels around different countries for business purposes. Second, it is submitted that the appellant spent considerable time in obtaining documentary evidence in regard to the process patent infringement. Lastly, it is submitted that, the appellant could not take advice in time to file the appeal within the stipulated time.

5. In our view, none of these three grounds provide sufficient cause which prevented the appellant from filing the appeal within the prescribed period of sixty days. The inordinate delay of eighty-five days, has not been satisfactorily explained. The fact that the appellant travels to different parts of the country and handles his business as the sole proprietor cannot be the ground for condoning the delay in filing the present appeal.

6. The contention that the appellant was required to obtain documentary evidence is also not persuasive. The appellant was required to collect all relevant material to support his cause, prior to filing of the suit. The bald explanation that the appellant took time to take advice is also unpersuasive. It is also not supported by any relevant material.

7. In ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers & Contractors (P) Ltd.: (2021) 6 SCC 460***, the Supreme Court has 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 of pressing negligent and stale claims....”

8. Keeping in view the object of enacting the Commercial Courts Act, 2015 (hereafter *the CC Act*), it would not be apposite for the Court to take a liberal view on the question of condoning the delay in filing applications or appeals.

9. The learned counsel appearing for the applicant/appellant submitted that the decision of ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers & Contractors (P) Ltd.*** (*supra*) is distinguishable on two grounds. First, he submits that the said decision is applicable only in the context of time limit for filing appeals under Section 37 of the Arbitration and Conciliation Act, 1996 and the judgment is not applicable to appeals under the CC Act. Second, he submits that a careful reading of the said decision indicates that delay of 60 days (which is equal to the time available for filing an appeal) must be condoned in ordinary course and only the period thereafter should be considered as a period of delay. He submits that therefore the effective delay in filing the present appeal should be construed as twenty-five days and not eighty-five days.

10. None of the aforesaid contentions have any merit.

11. The decision of the Supreme Court in ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v.***



Borse Brothers Engineers & Contractors (P) Ltd. (*supra*) is applicable not only to appeals under the Arbitration and Conciliation Act, 1996 but also the proceedings under the CC Act. This is expressly clear from the language of the extract set out above.

12. The contention that the delay of sixty days should be condoned in a normal course is also without any basis.

13. In view of the above, the present application is dismissed.

14. Consequently, the appeal is dismissed. The other applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 23, 2024/cl