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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 03rd October, 2024***
+ **CM(M) 3395/2024 & CM APPL. 53774-53775/2024**

M/S. TDI INFRASTRUCTURE LTD.

.....Petitioner

Through: Mr. Abhishek Das with Mr. Harshit
Kiran and Mr. Karan Minocha,
Advocates for Ms. Kanika Agnihotri,
Advocate.

versus

BABITA CHOPRA

.....Respondent

Through: Mr. Piyush Gupta with Mr. Om
Prakash Khorwal, Mr. I.N. Chitkara,
Mr. Prahlad B., Mr. Akash Verma,
Mr. C.P. Sharma, Mr. Sanjay Kumar,
Ms. Seema Dhan Kher and Mr. Vipin,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Short question raised in the present petition is to the effect whether the delay in lodging appeal before learned National Consumer Disputes Redressal Commission (in short 'NCDRC') should have been condoned or not.
2. Admittedly, the respondent herein had filed a complaint before State Consumer Disputes Redressal Commission, Delhi and her such complaint was disposed of in her favour and against the petitioner herein vide order dated 05.08.2022.
3. When the appeal was filed before learned NCDRC challenging the above said order, the appellant also moved an application under Section 5 of Limitation Act seeking condonation of delay of 644 days.



4. Interestingly, when the above said application was filed, the heading of the application was indicating as if there was a delay in filing the application for *restoration of the first appeal*.
5. Be that as it may, according to averments made by the petitioner in the above said application, the judgment had been pronounced by the learned State Commission on 05.08.2022 and a copy thereof was also supplied which was received by the petitioner on 29.09.2022. The sole reason behind the delay has been attributed to the fact that its one employee, who was the person-in-charge for overseeing all legal matters of its Company, left the Company on 30.09.2022 and since there were 300 odd matters, which were being dealt with by the petitioner Company, the above said case slipped through the cracks and left unattended.
6. According to petitioner, it was only when notice in context of execution petition filed by the respondent herein was received, it came to their knowledge that no appeal had been filed by them against the order of State Commission.
7. According to them, said execution petition was filed on 06.03.2023 and the petitioner Company learnt about the aforesaid execution only when it received the notice.
8. It is, however, not decipherable as to on which particular date, the petitioner came to know about the filing of the above said execution or, for that matter, the date on which it had received the notice of the execution petition, though according to the bare averments, they had received one order dated 20.03.2023, passed by the learned Executing Court and filed appeal on 28.03.2023.



9. If the petitioner is to be believed, then the appeal had been filed on 28.03.2023 but, apparently, there must have certain defects as such appeal was formally registered on 12.07.2024. There is no explanation, much less a plausible one, as to why it remained dormant all along and why no swiftness or alacrity was shown in removing defects, if any.
10. Be that as it may, the ‘action’ of petitioner speaks volume of its ‘inaction’.
11. This Court has gone through the reasonings given by learned NCDRC vide order dated 18.07.2024 which seem to be fully justifiable and logical in the given circumstances.
12. The relevant paras of said order reads as under:-

“3. Learned counsel has reiterated the submissions made in the delay condonation application and has not added anything further to it. Submission is that impugned Order was passed on 05.08.2022 but unfortunately on 30.09.2022 the employee of the company who was looking after the matter left the company. The new person who came in his place took time to get to the grips of the affairs of the company and with the matters that were pending which resulted in the omission to do the needful in the matter and the same contributed to the delay as a large number of cases were pending to be looked after. Later on execution petition was filed in which warrants of attachment of property were issued. Thereafter it came to the notice of the appellant company that the impugned Order has not been challenged and the appeal in that regard has not been filed. The steps to file the appeal were thereafter taken. Learned counsel has tried to show the multiplicity of the litigations in which the company is involved in other matters. It has also been submitted that in another matter the National Commission had stayed the proceedings of the complaint case and this fact also contributed to create a confusion and it was misunderstood that the appeal against the present matter has already been filed. Submission is that delay being neither deliberate nor intentional the same may be condoned.



4. First of all it may be observed that in the ordinary course whenever the aspect of evaluating the sufficiency of cause behind the delayed filing of a given petition or appeal, as the case may be, is involved, it is advisable to adopt a liberal approach and not a pedantic one. A pragmatic view needs to be adopted as it is found preferable to decide a case on its merits rather than to thwart the same at the threshold on the point of limitation. But while saying so, it must not be misconstrued to mean that the approach to be adopted can ever be such which may reduce the law on the point of limitation, wherever it is provided, into insignificance as if it is inconsequential and does not signify anything. The law of limitation wherever it is provided has a salutary purpose to serve which cannot be looked down with irreverence or with indifference. The Courts, judicial or quasi-judicial as they may be, can never afford to ride roughshod over the solemn provisions of limitation wherever they have been laid down by the Legislature in its wisdom. It is also to be kept in perspective that the failure to file a petition against a particular order and the failure to challenge the same within the prescribed period of time, often gives rise simultaneously to a right to the other side which accrues. This is true that if valid reasons come forth and sufficient cause is shown which may go to vindicate the delayed filing of a petition, the same may be accepted and the delay may be condoned by the given Forum. But this discretion conferred upon any Forum judicial or quasi-judicial as it may be, has to be exercised judiciously and in keeping with the norms. The exercise of discretion in such matters is not the exercise of any prerogative or privilege. It is essentially the exercise of a statutory power, granted by the Act, which has to be exercised judiciously and legally both. The delay of larger periods may be condoned in a given case if sufficient cause may be shown which resulted in the delay. On the other hand, a lesser period of delay may not be condoned if valid reasons furnishing or showing sufficient cause are not brought forth by the defaulting party. The onus to show and furnish the necessary factual or circumstantial basis which contributed to the delay, must be shown in order to earn the condonation and this onus is of the defaulting party who seeks such condonation.

5. When the Bench proceeds to evaluate the validity of the reasons offered as explanation it feels constrained to observe that the explanations pleaded do not live up to the mark and are difficult to be called sufficient cause resulting in the delayed



filing of the appeal. Here it may be relevant to quote paragraph 6 of the delay condonation application which reads as follows:-

“6. The Certified Copy of the Final Order dated 05.08.2022 was received by him on 29.09.2022. On the same day, the copy so received was collected by the office boy of the Appellant Company from the office of the Counsel for the Appellant Company.”

The mere perusal of the afore-said paragraph is sufficient to demonstrate that the certified copy had already been received by the company on 29.09.2022 while the petition has been filed on 28.03.2023. So far as the explanation of official leaving the company is concerned, it is not unusual in companies and the duties of the officials may keep on changing from time to time. It is an internal affair of the company and none else can regulate the same nor can be blamed for it. If there was an Order making the company aggrieved and the certified copy was also applied by the same and was also procured, the failure to file the appeal thereafter for the reason of a gross omission committed by the company or its officials cannot constitute a sufficient cause to be accepted as a valid explanation. The delay is not of days or weeks but of months and it would need a very convincing, very credible explanation to bridge up the hiatus that separates the date of the impugned Order and the date of filing the petition. Woefully the explanation offered is not tenable enough to be accepted as sufficient cause. It is true that while evaluating the sufficiency of cause with regard to the circumstances, which resulted in the delay in filing the present petition, the Bench does adopt a pragmatic approach and not a pedantic one and it does keep in perspective the practical side of the working of a particular institution or sector, Public or Private as it may be. The Commission does make due allowance in that regard. But such liberal disposition should not be construed to imply that such a long rope may ever be granted to any institution, company or sector which may go to result in shelving the law of limitation in the dark completely or which may go to render the same nugatory and reduce it to a naught.

6. The onus to show such factual basis from which may have emanated valid reasons to vindicate the delay in filing an appeal was on the appellant. But the appellant has obviously failed to discharge that onus to the satisfaction of this Bench. The Bench does not see even a semblance of an explanation which may constitute a good ground to condone the delay. The



application for condonation of delay is without much worth or substance, sufficient cause to condone the delay is not at all forthcoming. As such the Bench does not feel inclined to allow the application seeking the condonation.”

13. Merely because one of its employees had left the company on 30.09.2022, would not give any right or handle to the petitioner to claim that there was a justifiable cause or sufficient cause for condoning the delay. Such contention is totally fallacious in today's time when every information is available on click of mouse.

14. During the course of the arguments, it was specifically asked from learned counsel for petitioner as to how many other employees were there in their legal department. The answer was avoided by saying that it had no instruction. If the person who had allegedly left the company was heading the legal department, it can't be believed that such person was only a 'one-man army'.

15. Reference has been made to *Pathapati Subba Reddy (died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA)*: 2024 SCC OnLine SC 513 by learned counsel for the respondent and the relevant para reads as under:-

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag v. Katiji, this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be



condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act."

16. Keeping in mind the overall facts and circumstances of the case, this Court is of the firm view that the discretion exercised by learned NCDRC does not call for any interference as no good ground has been shown which may justify the delay in lodging the appeal.

17. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

18. Finding no merit or substance, the present petition is, hereby, dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 03, 2024/st