



2024:DHC:8530



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 23rd October, 2024**
+ **C.R.P. 267/2024 & CM APPLs. 22323/2024,**
22324/2024, 37657/2024

M/S B.E. BILLIMORIA AND COMPANY LIMITED.....Petitioner

Through: Mr. Amit Kumar, Advocate.

versus

ASHOK KHANNARespondent

Through: Mr. Aditya Bakshi & Ms. Tulna
Rampal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

The copy of the Additional Affidavit has been handed over physically in the Court today by the counsel for the petitioner. The Registry is directed to take the same on record.

CM APPL. 37658/2024

1. The present Application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the petitioner seeking condonation of 330 days' delay in filing the present Petition to challenge the impugned Order dated 07.01.2023. Initially, CM(M) 2358/2024 under Article 227 Constitution of India, 1950 was filed before this Court; however, the same has been converted into the Revision Petition



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vide Order dated 09.09.2024.

2. It is submitted in the Application for condonation of delay that on 07.11.2017, the arguments commenced on the preliminary issues, and was reserved for Order on *Preliminary Issues* in 2023 which were finally decided on 07.01.2023, by the impugned Order.

3. In September, 2022, the office of the petitioner-Company shifted and during shifting, the documents got misplaced. Also, *Shri Ravinder Kumar* who has handling the present matter from the Delhi Office, got retired. After a lapse of about one year, Ms. Vaishnavi Medekar, Executive Legal, managed to contact the erstwhile employee *Shri Ravinder Kumar* and through him, she managed to contact the present Counsel and enquired from him about the status of the present case. Consequently, the learned counsel came in contact with the Executive Legal of petitioner-defendant/Company and conveyed about the impugned Order. An Additional Affidavit has also been filed wherein it is further explained that earlier, Ms. Soniya Kanitkar and Ms. Margereta were dealing with the present Counsel on behalf of the petitioner-defendant-Company. Ms. Soniya Kanitkar left the petitioner-Company on 14.04.2018 and Ms. Margereta left the Company on 30.09.2019. Thereafter, on account of COVID-19 Pandemic, no person of the petitioner-Company contacted the counsel.

4. Further, the counsel who had been handling the matter left the petitioner-Company and, therefore, he was out of reach from the person who was handling the matter and he neither conveyed the impugned Order to him nor could he seek instructions to challenge the impugned Order. Despite this, the counsel who was the *vakalatnama* holder of the petitioner, continued to diligently pursue the case before the learned Trial Court,



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though he was unable to contact his client to suggest him to challenge the Impugned Order.

5. After a lapse of one year approximately, he managed to contact the concerned authorised person of the petitioner and conveyed him about the impugned Order, who took some time for approval from the concerned Management for challenging the impugned Order.

6. It is submitted that the delay in filing the present petition was only on account of the communication gap between the learned counsel and the concerned employee of the petitioner-defendant-Company. Therefore, the delay of 330 days is sought to be condoned.

7. **The Applications contested on behalf of the respondent (plaintiff)** on the ground that the Application under Order VIII Rule 1A of CPC, 1908 got filed on behalf of the petitioner-defendant on 25.11.2023 for placing on record the additional documents, wherein it was submitted that one of the employees of the petitioner-defendant met *Shri Anil Prasad, Ex. Employee* of the petitioner-Company who left the service in 2013, from whom he sought assistance about the facts of the present case. *Shri Anil Prasad* handed over the documents which were sought to be placed on record by way of Application under Order VIII Rule 1A of CPC, 1908 by the petitioner-defendant. Though the respondent-plaintiff did not object to taking of the documents on record, but the submissions made therein show that *Shri Anil Prasad* who had left the service of the petitioner-Company in 2013, was in power and possession of the documents which were handed over in the year 2023 to the present employee and then the same were filed in the Court.

8. It is argued on behalf of the respondent-plaintiff that the varied



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explanations which have been given in the different Applications, clearly reflect that there is no cogent explanation given for condonation of 330 days' delay in filing the present petition. Therefore, the present petition is liable to be dismissed on the ground of limitation.

9. **Submissions heard.**

10. The pertinent question is whether the **delay of 330 days** in filing the present petition, is liable to be condoned.

11. From the documents and the Affidavit filed in support of the present Application under *Section 5* of the *Limitation Act, 1963*, it is apparent that the explanation given that Shri Anil Prasad who had left the service of the petitioner-Company in the year 2015, was in power and possession of the documents which were handed over by him in the year 2023 and thus got filed in the Court, is patently not tenable as no employee, who leaves the service of the Company, carries the documents. Furthermore, in the present Application for condonation, the name of the employer has changed to Shri Ravinder Kumar as the person who was handling the present matter from the Delhi Office and had got retired.

12. Further, it is claimed that *Ms. Soniya Kanitkar* and *Ms. Margereta* who were dealing with the present counsel on behalf of the petitioner-Company, had left the service of the petitioner-Company on 14.04.2018 and 30.09.2019 respectively. Significantly, while all the employees who were responsible for this case, left one after the other, the Ld. Counsel diligently continued to pursue the case wherein now the matter is at the stage of recording of evidence.

13. After a lapse of one year approximately, the counsel managed to contact *the concerned authorised person* and conveyed him about the



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impugned Order, who took some time for approval from the concerned Management for challenging the impugned Order. The CM(M) 2358/2024 challenging the impugned Order 07.01.2023 got filed on 05.04.2024 which was subsequently converted into the present Revision Petition *vide* Order dated 09.09.2024.

14. Pertinently, all the aforesaid Applications so filed, have been supported by the Affidavit of Mr. Johnson Varughese, GM (HR & Admin) of the petitioner-Company. Moreover, the Written Statement filed before the learned Trial Court was also supported by the Affidavit of Mr. Johnson Varughese. Also, the Resolution of the Company to defend the Suit before the learned Trial Court has been in favour of Mr. Johnson Varughese since 2016. To now assert that the learned counsel was not in contact with the authorised person of the petitioner-Company to challenge the impugned Order dated 07.01.2023, is not tenable for the simple reason that the record reveals that the Applications, etc. were being regularly filed duly supported by the Affidavits of Mr. Johnson Varughese. Pertinently, all during this period the Ld. Counsel for the petitioner continued to represent the Company regularly.

15. The different explanations given in different Applications, reflect the falsehood of the reasons given for condonation of delay.

16. Even if the explanation as given in the present Application is accepted, it cannot be overlooked that at least in November, 2023, the counsel came in contact with the concerned person of the petitioner-Company, despite which the present got filed after about more than five months, only in April, 2024 for which again specious explanation given is that the Management took time to give the approval for filing the present



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petition.

17. In view of above, there is blatantly no cogent explanation has been given and *no ground is made out for condonation of delay* of 330 days in filing the present Revision Petition.

18. Accordingly, the present Application is dismissed.

C.R.P. 267/2024

19. In view of the Order passed in CM APPL. 37658/2024, the present Revision Petition along with pending Applications, is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 23, 2024
S.Sharma