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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA(COMM) 367/2024, CM APPL. 51835/2024-Delay 752 days
in re-filing appeal, CM APPL. 51836/2024-Interim relief.
VIMLESH R PALAPPELLANT

Through: Mr Rana Sandeep Bussa, Ms. Arti
Sharma and Ms. Tanya Sharma,
Advocates

versus

DIAMOND INTERNATIONAL PVT LTD.RESPONDENT
Through: Advocate (appearance not given)

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER
26.09.2024

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1. The present Regular First Appeal under Section 13(1-A) of the Commercial Courts Act, 2015 read with Order XLI of the Code of Civil Procedure, 1908 seeks to assail the judgment and decree dated 23.04.2022 passed by the learned Trial Court in CS (COMM) 24/ 2018. Alongwith the said appeal the appellant has also filed an application under Section 151, CPC seeking condonation of delay of 752 days in re-filing the appeal.
2. As per the learned counsel for the appellant, though the present appeal was filed within time, however, since the appellant is based in Aurangabad, Maharashtra it was not possible for him to contact his counsel based in Delhi and/ or furnish the necessary documents to him.
3. Further, since the appellant was busy in taking care of his ailing father during the same period, he forgot about the pending case in Delhi. He, therefore, contends that since the delay in re-filing of the appeal was



not deliberate but on account of unavoidable circumstances, the same be condoned.

4. Having considered the submissions of learned counsel for the appellant and perused the record, we are of the view that even though the delay in re-filing of an appeal has to be generally considered liberally, it does not imply that the inordinate delay of a period of 752 days should be condoned without sufficient cause. The reasons for the delay coupled with the length thereof, have both to be taken into consideration, especially when there is an unexplained delay as in the present case where the appellant claims to have forgotten about this appeal itself. We do not find the explanation given by the appellant to be sufficient to condone this extraordinarily long delay of 752 days in re-filing the appeal.

5. We have also perused the accompanying application seeking condonation of delay in re-filing the appeal, but find that the same is also bereft of any (material) particulars and reasons mentioned therein are wholly cryptic, inspiring no confidence in us. So much so, the submissions advanced by the learned counsel for the appellant before us today, are nowhere mentioned in the application at all. It would, therefore, apposite to refer to the averments made in the application which is reproduced as under:

“1. That the Appellant has filed the present Regular First Appeal before the Hon'ble High Court of Delhi by challenging the impugned order and judgment dated 23.04.2022 passed by the District Judge (Commercial Court] North West District, Rohini, Delhi in CS (Comm] No.24of 2018.

2. It is submitted that, the case was filed on 30.06.2022 vide Re-Filing Diary No. E-1063523/2022 and thereafter the Appellant fell sick and was affected severely due to after covid long term side effects. Also the counsel tried to communicate with the client but there is no response regarding further instructions and clarification of filing additional



documents which were to be filed in further course of time and also the file was misplaced in the Advocates office as the counsel has shifted from old office address: S-Legal Associates, B-66, Lajpath Nagar-1 to New Office Address: 62, T14, Supreme Enclave, Mayur Vihar-I.

3. It is submitted that, during this course of time and after lapse of two years in 2024 vide order dated 02.07.2024 the Appellant received a notice of show cause from District and Sessions Court Aurangabad to appear on 22.07.2024 in case titled "M/s Diamond International Pvt Ltd Vs Vimlesh R.Pal". On receiving this notice the Appellant was reminded of his case at Delhi and sought contact of lawyer at Aurangabad and traced the Lawyer who was engaged at Delhi. On getting in touch the Appellant informed that he was sick and there after his father too fell sick and due to family problems the appellant could not contact back the Advocate and during the process he lost the contact too. The copy of the Show Cause Notice is annexed here with as Annexure-1.

4. It is further submitted that, the Appellant Company is based at It is further submitted that, the Appellant Company is based at Aurangabad, Maharashtra and therefore it was difficult to arrange for the Documents sought by the counsel at Delhi and as the Litigation was pending in another state the Appellant has misplaced the contact and due to family and health emergency forgot the pending

5. It is submitted that the Appellant has not sought any equitable or urgent relief in the present matter and as such there shall be no prejudice caused to the Respondent if the present application is allowed. As such it is only just and necessary that the delay in Refiling the Regular First Appeal (Commercial) of 731 days may kindly be condoned and the Regular First Appeal be taken on record."

6. Thus, looked at from any angle, we find no reason to condone the delay of 752 days in re-filing of the appeal. Accordingly, the present application seeking condonation of delay of the 752 days is dismissed.

7. Resultantly, the present appeal also stands dismissed.

REKHA PALLI, J

SAURABH BANERJEE, J

SEPTEMBER 26, 2024/So