



2024:DHC:8833-DB



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

Date of decision: 14.11.2024

+ **RFA(OS)(COMM) 22/2024 and CM APPL.Nos.66621-23/2024**

ORIENTAL INSURANCE CO. LTDAppellant
Through: **Mr. Abhishek Gola, Advocate.**

Versus

SHARP MINT LTDRespondent
Through: **Mr. Kirti Uppal, Sr. Advocate with
Mr. Bhaskar Tiwari and Mr.
Ramakant Shukla, Advocates.**

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J (ORAL)

CM APPL. 66623/2024

1. This is an application under Section 5 of the Limitation Act, 1963 filed by the appellant seeking condonation of 182 days delay in filing the accompanying appeal under Section 13 of the Commercial Act, 2015 against the judgment and decree dated 02.03.2024 (*impugned judgment*) whereby the learned Single Judge has decreed the suit for recovery of Rs.2,45,35,797.20/- alongwith interest @6% per annum from 01.05.2015 till realization, as instituted by the respondent.

2. Since we are hearing the learned counsel for appellant for adjudication of the present application seeking condonation of delay, there is no need for us to advert to the merits of the matter.

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3. It is the case of the appellant that though the impugned judgment was delivered on 02.03.2024, it never received a certified copy thereof from its erstwhile Advocate before the learned Single Judge and the decision came to its knowledge only upon receipt of notice of the execution petition filed by the respondent on 03.07.2024. Thereafter, though it deputed and contacted one Mr. Apoorva Sarvaria, Advocate on 16.07.2024, he opined against filing of an appeal on 02.08.2024 against the impugned judgment.
4. Thereafter, from 06.08.2024 till 23.08.2024, the files qua the present case kept on moving from various offices of the appellant.
5. Based on this opinion given by the said counsel, a statement was made on behalf of the appellant before the learned executing Court on 20.08.2024 that the payment of the decretal amount would be made within a period of six weeks. It is after the disposal of the said execution petition on the basis of the undertaking given by the appellant to make the payment of the decretal amount to the respondent, that the appellant claimed to have sent the file again for comments of the Fire Technical Department, which opined on 01.10.2024 that an appeal should be filed.
6. Then, in the meanwhile, an application for revival of the execution petition was filed by the appellant, wherein this Court on 24.10.2024 directed the appellant deposit the entire decretal amount with the Registry of this Court within a period of one week.
7. It is then that the appellant took steps to prefer the present appeal alongwith the present application ultimately on 06.11.2024. Under these circumstances, learned counsel for appellant submits that the delay in filing the present appeal was not wilful and has occasioned only due to circumstances which were beyond the control of the appellant. He submits



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that the appeal was filed on 06.11.2024 only because the appellant learnt about the impugned judgment on 03.07.2024 when they received the notice of the execution petition filed by the respondent. It is his claim that as noted hereinabove, after receiving notice of the execution petition, the appellant first tried to contact its erstwhile counsel who was representing the appellant before the learned Single Judge, but upon receiving no response from him, engaged another counsel on 16.07.2024, who gave his specific opinion on 02.08.2024 that the case was not a fit case for filing an appeal and the appellant should pay the decretal amount.

8. He submits that now that the appellant has also deposited the decretal amount before the Executing Court, this Court ought to condone the delay and examine the impugned judgment on merits. He vehemently submits that the appellant's plea that the impugned judgment is liable to be set aside as regarding the non-consideration of the surveyor's report towards the purported under insurance has not been considered by the learned Single Judge.

9. On the other hand, Mr. Kirti Uppal, learned Senior Counsel who is appearing on behalf of the respondent on advance notice opposes the application by urging that the reasons given in the application itself shows that the matter has been dealt with in a most casual manner by the appellant. Further he contends that the appellant had specifically undertaken before the learned Executing Court as far back as on 20.08.2024 that the decretal amount will be paid within six weeks. Furthermore, the averments made in the present application in itself show that the appellant's own counsel had recommended that it was not a fit case for filing of an appeal and, therefore, prays that the application be dismissed.



10. Having considered the submissions of learned counsel for the parties and perused the record, it is clear that though admittedly the impugned judgment was passed by the learned Single Judge way back on 02.03.2024, the present application is bereft of any particulars and is without any sufficient explanation regarding the period till 03.07.2024, whence the appellant was served with the notice in the execution petition which led to the delay in filing the present appeal. In fact, the statutory period for preferring an appeal by the appellant was already over during the said period itself.

11. Furthermore, even though the appellant has tried to make out a case for seeking condonation of delay by laying out the sequence of events which happened/ were happening thereafter till 06.11.2024, the same are merely bald pleas qua *inter-se* movement of files pertaining to the present case in different offices of the applicant which as per Section 5 of the Limitation Act cannot be treated as “*Sufficient cause*” for the application of condonation of delay being allowed.

12. Moreso, whence Section 5 of the Limitation Act proscribes that any party for seeking benefit thereof, i.e., condonation of delay has to satisfy the Court upon giving “*sufficient cause*” which prevented it from filing any appeal and/ or application within the statutory period. Such “*sufficient cause*” ought not to be on account of any lack of *bona fides*, negligence or inaction on the part of the party seeking such condonation of delay. Moreover, the said “*sufficient cause*” has to be appropriately entailed out in any such application of condonation filed by such party.

13. The Hon’ble Supreme Court in ***Basawaraj v. Land Acquisition Officer***, (2013) 14 SCC 81, while dealing with the expression “*sufficient*



cause” as provided under Section 5 of the Act and held as under:-

“11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, p. 266: “605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.” An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510] , *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

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15. The law on the issue can be summarised to the effect that where a



case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

14. Reliance is also placed upon the dictum of the Hon’be Supreme Court in **Ramlal vs. Rewa Coalfields.**, 1961 SCC OnLine SC 39, wherein it has held as under:-

“7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan [(1890) ILR 13 Mad 269] “Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words „sufficient cause“ receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant.”

15. Considering the factual matrix involved, in the present case, in our



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opinion, there is no “*sufficient cause*” shown by the appellant for condoning the delay in filing the present appeal. The appellant has been unable to show any *bona-fide* cause or to show that despite due diligence it was unable to prefer the present appeal in time. The reasons put forward by the appellant in the application instead of showing “*sufficient cause*” for condoning the delay in filing the appeal, demonstrates how the appellant has been most negligent in filing this belated appeal at a stage whence the limitation period of 60 days was long over. As such, if in such a circumstance this Court was to condone the delay in preferring the present appeal the object and purposes of the Limitation Act would be defeated.

16. Consequently, the appeal alongwith the accompanying application stands dismissed.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

NOVEMBER 14, 2024/MK