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

+ **FAO 364/2024**

**M/S METAL INDIA THROUGH PROPRIETOR ASHOK  
KANODIA**

.....Appellant

Through: Mr. Neeraj Sharma, Advocate.

versus

**PR METAL INDUSTRIES THROUGH PROPRIETOR NIMIT JAIN**

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**JUDGMENT (Oral)**

% **03.12.2024**

**CM APPL. 68149/2024(EXEMPTION)**

Allowed, subject to all just exceptions.

Application stands disposed of.

**CM APPL. 68148/2024 (delay 2392 days in filing the appeal)**

1. The present appeal under Order 43 read with Section 104 CPC has been filed for setting aside the impugned order dated 03.04.2018 passed by the learned trial court.
2. Appellant filed a summary suit under Order 37 CPC before Delhi High Court for recovery of Rs. 28,58,623/- with interest. Respondent filed an application for leave to defend, which was contested by the appellant. Subsequently, the suit was transferred to the District Court, Shahdara.
3. On 26.09.2017, suit was dismissed in default due to non-appearance of the appellant. Appellant later filed an application under Order 9 Rule 9



CPC for setting aside the order of dismissal. During such proceedings, trial court observed that the cause of action arose in Faridabad, Haryana and concluded that it lacked territorial jurisdiction. Consequently, the plaint was returned to the appellant for presentation before the competent court.

4. Appellant has challenged the impugned order dated 03.04.2018, asserting that the cause of action arose within the territorial jurisdiction of Shahdara District as the goods were delivered to the respondent at Shahdara and both parties reside and work for gain in Delhi.

5. Appeal has been preferred after a delay of 2392 days. Appeal is accompanied by an application under Section 5 of the Limitation Act for condonation of delay.

6. Learned counsel for the petitioner submits that appeal could not be preferred within the period of limitation because of lack of proper legal advice from the previous counsel. Covid-19 Pandemic continued for two years was also one of the reasons for delay in filing the appeal. It is submitted that petitioner is an old man aged about 70 years and should not be allowed to suffer due to technical procedural lapse. It has been further submitted that appellant has a good case in his favour, and therefore, should not be allowed to suffer because of improper advice of his previous counsel. It is submitted that the delay in filing the application is bona fide and not intentional.

7. While praying for the restoration, it was the duty of the petitioner to explain each day's delay. Even taking into consideration the Covid Pandemic situation while the limitation period was suspended/extended by the Supreme Court, it was still incumbent upon the petitioner to explain as to why appeal was not filed before the onset of Pandemic i.e. till March 2020



and after the Pandemic was over in 2022.

8. Under similar circumstances, while dealing with the question of limitation in the case of **S. Gurdeep Singh through LRs vs. S. Surjeet Singh & Anr. FAO 249/2024**, in Para No. 8, this Court held as under:-

“8. Where a case is brought before the court beyond the period of limitation, the applicant has to explain to the court as to what was the sufficient cause, which means an adequate and enough reasons which prevented him to approach the court within the period of limitation. Even after the “sufficient cause” is established, the court still has the discretion to decide whether to allow or dismiss the application for condonation of delay upon the bona fides of the party. Such discretion is not to be exercised by the court when the delay is caused by negligence, inaction or lack of bona fide. In such cases, even though the law of limitation harshly affects or causes inconvenience to the party, the court has to apply it with all its rigour. In order to advance substantial justice, though liberal and justice oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation.”

9. Appellant has tried to put entire blame on the wrong advice given by his previous counsel without explaining its own conduct. Appellant kept sleeping for 2392 days without any just explanation. There is nothing in the condonation application to justify the delay in filing the appeal, inasmuch as, appellant only made vague averments regarding the wrong advice by his previous counsel.

10. It is evident from the record that appellant has been negligent in filing the appeal after a huge delay. Appellant has failed to show any sufficient cause for condoning the delay in filing the present appeal.

11. Hence, I find no merit in the application under Section 5 of the Limitation Act. The same is dismissed.



12. Consequently, the appeal filed being time-barred is also dismissed.

**RAVINDER DUDEJA, J.**

**DECEMBER 3, 2024**

*RM*