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

% ***Judgment delivered on: 29th Nov, 2024***

+ **CM(M) 3940/2024**

P R INNOVATIONS PVT LTD

.....Petitioner

Through: Mr. Anil Kumar Mishra, Mr.
Mrinal Bharti, Mr. Manish
Kumar Shekhari and Mr.
Supantha Sinha, Advocates.

versus

L G ELECTRONICS INDIA PVT LTD

.....Respondent

Through: Mr. Anupam Srivastava, Mr.
Dhairya Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (Oral)

CM APPL. 69667/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed.

**CM(M) 3940/2024 & CM APPL. 69665/2024 (interim relief), CM
APPL. 69666/2024 (bring on record additional documents)**

1. The present petition impugns the order dated 21.10.2024 passed by learned District Judge (Commercial Court-02), East District, Karkardooma Court, Delhi in CS (COMM) 297/2023.

2. Petitioner is the defendant in the suit seeking recovery of Rs.1,44,79,116/- filed by the respondent before the District Judge (Commercial Court).



3. Summons were issued to the petitioner on 04.09.2023 returnable for 08.11.2023. Summon was served to the petitioner on 02.11.2023.
4. On 08.11.2023, counsel for the petitioner appeared and filed vakalatnama and moved an application seeking supply of legible copies of plaint and documents. On such application, the learned Trial Court directed the respondent to supply legible copies of the Distribution Agreement, tax invoices and email dated 15.05.2020. The learned Trial Court further directed the petitioner to file written statement with affidavit of admission/denial of documents within thirty days from the date of receipt of the documents.
5. The respondent supplied legible copies of the aforesaid documents via email to the petitioner on 16.11.2023.
6. On 22.02.2024, the learned Trial Court took note of submissions of learned counsel for the petitioner that she will file written statement alongwith affidavit of admission/denial of documents with an application for seeking condonation of delay within the stipulated period as provided under the Commercial Courts Act, 2015 [**“Act”**].
7. The petitioner filed the written statement on 15.03.2024 along with an affidavit of admission/denial of documents and an application seeking condonation of delay in filing the written statement.
8. On date fixed i.e. 06.05.2024, the Trial Court noted the late filing of the written statement and granted an opportunity to the respondent to file replication and listed the matter for arguments on the application for condonation of delay.
9. The application for condonation of delay was dismissed on



21.10.2024 while holding that the delay has not been sufficiently explained, it is this order which has been challenged in the present petition.

10. Learned counsel for the petitioner submits that written statement could not be filed within thirty days from 16.11.2023 because of various reasons such as voluminous documents, ill parents, time taken in co-ordination and the death of counsel's grandfather.

11. Learned counsel further submits that the impugned order is harsh, arbitrary and without considering the reasons. It is further submitted that Trial Court adopted a pedantic approach rather than taking the liberal approach while considering the application for condonation of delay.

12. Per contra, learned counsel for the respondent submits that the reasons assigned for the delay are totally vague and petitioner has failed to explain each days delay in filing the written statement. It is submitted that the timelines provided in the Act are to be adhered strictly and that petitioner has failed to explain each day's delay. According to him, the Trial Court had rightly dismissed the application under Section 5 of the Limitation Act, 1963, thereby closing his right to file the written statement.

13. The Act mandates filing of the written statement within thirty days from the date of service. Ordinarily in case of commercial dispute, the written statement is to be filed within a period of thirty days. However, grace period of further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such cost as it deems fit to allow such written statement to come on record. Beyond 120 days from the date of service of summons, the



defendant forfeits the right to file the written statement and the Court can in no case allow the written statement to be taken on record.

14. Admittedly, the written statement in the present case has not been filed within thirty days from the date of service of summons and for this reason petitioner had filed an application under Section 5 of the Limitation Act for condonation of delay. The petitioner has failed to show his bonafides by not explaining each days delay. He relies upon the decision of this Court in case of ***Ather Ali and Anr vs Mohd Shafi, (Deceased) Through AR Mohd. Akbar 2024 SCC Online Del 7495***. The relevant para of the judgment is extracted below:-

“6. The undisputed propositions of law, as culled out of various judicial precedents are as follows. The condonation of delay cannot be a matter of course and the same is a matter of discretion of the court to be exercised in a judicious manner. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third party rights had become embedded during the interregnum, courts should lean in favour of condonation. Not the length of delay but the credibility of the explanation offered is the relevant factor where the delay is not inordinate. The expression "sufficient cause" used in Section 5 of the Limitation Act must receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafides is imputable to a party. The sufficiency or otherwise of the cause set up by the applicant in such cases has to be tested by examining as to whether the applicant was prevented from filing the appeal within time by factors beyond his control.

6.1 In the case of Ramlal vs Rewa Coalfields Ltd., AIR 1962 SC 361, the Hon'ble Supreme Court of India observed thus :

"7. In construing Section 5(of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration 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 the 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 upon the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice."

6.2 In the case of Finolux Auto Pvt. Ltd. Vs Finolex Cables Ltd., 136(2007) DLT 585(DB), a Division Bench of this Court held thus:

"6. In this regard, we may refer to a decision of the Supreme Court in P.K. Ramachandran vs State of Kerala, IV(1997) CLT 95 (SC). In the said decision, the Supreme Court has held that unless and until a reasonable or satisfactory explanation is given, the inordinate delay should not be condoned. In para 6 of the judgment, the Supreme Court has laid down in the following manner :

"Law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."

6.3 In the case of Pundlik Jalam Patil (dead) by LRs vs Executive Engineer Jalgaon Medium Project, (2008) 17 SCC 448, the Hon'ble Supreme Court of India held that basically the laws of limitation are founded on public policy and the courts have expressed atleast three different reasons supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, and (iii) that persons with good causes of action should pursue them with reasonable diligence. It was observed that the statutes of limitation are often called as statutes of peace in so far as an unlimited and perpetual threat of limitation creates insecurity and uncertainty which are essential for public order.

6.4 In the case of Lanka Venkateshwarlu vs State of Andhra Pradesh, (2011) 4 SCC 363, the Hon'ble Supreme Court of India



observed thus :

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country including this court adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act".

The concepts of "liberal approach" and "reasonableness" in the exercise of discretion by the courts in condoning delay were considered by the Hon'ble Supreme Court of India in the case of Balwant Singh vs Jagdish Singh, (2010) 8 SCC 685, holding thus :

"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction is normally to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the rights and obligations of party to arise. These principles should be adhered to and applied appropriately depending upon the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27.

28. The concepts such as "liberal approach", "justice oriented approach" and "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially in cases where the court concludes that there is no justification of the delay...."

6.5 In the expressions of this Court in the case of Shubhra Chit Fund Pvt. Ltd. vs Sudhir Kumar, 112 (2004) DLT 609, too much



latitude and leniency will make provisions of the Limitation Act otiose, which approach must be eschewed by courts. In the case of Union of India vs C.L. Jain Woolen Mills Pvt. Ltd., 131 (2006) DLT 360, one of the arguments of the applicant Union of India seeking condonation of delay in filing the appeal was that the power to condone delay has been conferred to do substantial justice and the court should adopt a liberal approach and the delay resulting from official procedures should normally be condoned. This Court rejected the argument, placing reliance on the judgment in the case of P.K. Ramachandran and observed that although the provisions under [Section 5](#) Limitation Act have to receive liberal construction, but the court cannot ignore the fact that where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner without disclosure of good and a sufficient cause for condonation of delay.”

15. The Hon’ble Supreme Court in case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors* (2013) 12 SCC 649, after referring to the earlier decisions laid down the following principles as extracted below:-

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally



unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

16. No doubt in view of the principles laid down by the Hon’ble Supreme Court in *Esha Bhattacharjee* (Supra), the application for



condonation of delay is not to be dealt in a routine manner. Yet there should be a liberal, pragmatic, justice oriented and non-pedantic approach while dealing with such an application and the Court has to be mindful of distinction between inordinate delay and delay of short duration.

17. In the case of ***Collector, Land Acquisition, Anantnag and Anr vs Mst. Katiji and Ors (1987) 2 SCC 107***, the Hon'ble Supreme Court laid down the approach that needs to be followed by the hierarchy of the courts. The relevant principles laid down by the Hon'ble Supreme Court are extracted below:-

“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on ”merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the



other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the “State” which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the “State” is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.”

18. Coming back to the present case, the court finds that even though the written statement has not been filed within the stipulated



thirty days period, the same was filed within the extended window of 90 days. No doubt, the petitioner has not explained each days delay, but has referred to various factors which caused delay in filing the written statement viz. death of grandfather of the counsel, co-ordination delay with the petitioner and voluminous documents.

19. The application under Section 5 of the Limitation Act, 1963 should have been construed liberally so as to ensure that the lis between the parties is decided on merits rather than technicalities. Rather the learned Trial Court should have adopted a pragmatic, and justice oriented approach while dealing with such an application.

20. For the delay occasioned on account of the written statement not having been filed in 30 days time, petitioner could have been subjected with cost.

21. In view of the matter, the impugned order dated 21.10.2024 is set aside, subject to the petitioner paying to the respondent cost of Rs.25,000/- within six weeks from today. Upon payment of cost, the written statement filed by the respondent be taken on record. The present petition accordingly stands disposed of along with the pending applications in terms of the aforesaid order.

RAVINDER DUDEJA, J.

NOVEMBER 29, 2024/sk