



2024:DHC:10140



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

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Date of decision: 10.12.2024

+ **CM(M) 4043/2024**

M/S. WORLDS WINDOW WARDHA INFRASTRUCTURE
PVT LTDPetitioner

Through: Mr. Shubham, Advocate

versus

M/S. HONEY OVERSEAS THROUGH PROPRIETOR
.....Respondent

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT (ORAL)

RAVINDER DUDEJA, J.

CM Appl. 72274/2024 (exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM Appl. 72275/2024 delay of 42 days in re-filing of petition.

For the reasons stated in the application, delay of 42 days in re-filing the petition stands condoned.

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1. The petitioner impugns the order dated 24.07.2024 passed in MSIC DJ No. 507/2024 whereby the learned Trial Court dismissed the application under order IX Rule 4 CPC for restoration of the suit dismissed for non-prosecution.

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2. Petitioner filed a suit for recovery along with the pendente lite and future interest before the Commercial Court. The case was listed before the Trial Court on 06.04.2023 but no one appeared for the petitioner. The matter was adjourned to 07.06.2023. On that day also, the petitioner did not appear and therefore the suit was dismissed for non-prosecution.

3. Petitioner filed an application on 04.07.2024 for restoration of the suit. The learned Trial Court while relying upon the decision of the Supreme Court in the case of *Baswaraj & Anr. Vs. Special Land Acquisition Officer (2013) 14 SCC 81*, dismissed the application being hopelessly barred by limitation.

4. Learned counsel appearing for the petitioner submits that the delay in filing the application was neither deliberate nor intentional. It is submitted that the suit was e-filed on 06.04.2023. The court issued directions that the original file be submitted. However, the file got misplaced from the previous counsel. Despite best efforts, the file could not be traced and therefore, for the said reason, the same could not be submitted in court. It is further submitted that the file was found in May 2024, after which immediate steps were taken to file the restoration application. It is also submitted that the petitioner could not file the application for restoration due to the reason of original file being misplaced.

5. It is argued that there is no deliberate act of negligence or malafide intent to cause delay. The misplacement of the original file was an unforeseen event and upon its recovery, the petitioner promptly took steps to file application for restoration of the suit. It is



also argued that court should adopt a liberal approach in cases where the delay is caused due to genuine reason and beyond the control of the party and petitioner should not be made to suffer because of the fault of his Advocate.

6. While praying for restoration, it was the duty of the petitioner to explain each day's delay. This Court 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 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.”

7. As per the petitioner's own assertion, by the time he reached the court at 12:30 PM, the case had already been dismissed for non-prosecution. Thus, petitioner derived the knowledge of the dismissal of the suit on 07.06.2024 itself. Assuming that file had got misplaced by the then counsel, there was nothing which prevented the petitioner



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or the then counsel to make inspection of the court record and file application for restoration of the suit within the limitation period.

8. The petitioner has tried to put blame on the previous counsel for misplacing his file. However, petitioner cannot wash his hands by simply putting blame on the previous counsel. Petitioner needed to be diligent about the judicial proceedings pending in the court of law initiated at its instance. It appears that blame is being attributed on the Advocate with the view to get the delay condoned. After filing the suit, the litigant cannot go to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. The petitioner in this case is not a simple illiterate person but a private limited company. The litigant is supposed to be vigilant and pursue its case diligently on all the hearings. The Division Bench of this Court in the case of **Man Singh (deceased) through LR. Vs. Gaon Sabha Jindpur 2012 (4) ILR Del. 50** held that the litigant has to be vigilant and should contact and take part in the proceedings with due diligence, and if negligence on the part of the litigant is established in a particular case, then the courts are not to come to rescue of such applicants.

9. The Trial Court rightly observed that if the original file was misplaced, the petitioner could have taken a printout from e-file and could have filed the application for restoration within the limitation period.

10. Limitation period prescribed for filing the application under Article 122 of the schedule to the Limitation Act 1963 is 30 days from the date of the dismissal. Admittedly, the application for restoration



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has been filed more than one year from the date of such dismissal. Even as per petitioner's own averments, the file was found in the month of May 2024, but the application under Order IX Rule 4CPC was filed on 4.07.2024. It is not understood as to why petitioner took another two months for filing the application for restoration. The trial court has rightly concluded that the application was devoid of any merit and is hopelessly barred by limitation.

11. The impugned order does not suffer from any illegality or impropriety and does not call for any interference. The petition is therefore dismissed.

RAVINDER DUDEJA, J.

DECEMBER 10, 2024

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