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

+ RFA 1029/2018 & CM APPLs. 53707/2018, 53710/2018

M/S PLANMAN MEDIA PVT LTDAppellant

Through: Appearance not given.

versus

CHARU KHANNA & ORSRespondents

Through: Mr. D. Khanna, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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01.10.2024

CM APPL. 53710/2018 (for condonation of delay)

1. This application has been filed for condonation of delay of 433 days in filing of the accompanying appeal, against a judgment and decree of the learned Trial Court dated 08.06.2017.
2. The period of limitation for filing of the appeal is ninety days, but the appeal was only filed only in November 2018, i.e., approximately seventeen months after the date of the decree.
3. The explanation for the delay is provided as follows:

"2. That the earlier Authorised Representative namely Mr. Ajit Kumar, who was representing the Appellant Company in the proceedings pending before the Ld. ADJ had left the service of the Appellant in the month of August 2018 without tendering any notice or resignation and handing over and also failed to apprise the Appellant about the actual status of the matter pending before the Ld. ADJ. Resultantly, the Appellant came to know about the passing of the impugned Judgment and Decree only when it came to know about the issuance of warrant of attachment on 13.09.2018 in the proceedings pending before the Ld. ADJ in the case titled as "Charu Khanina &



Ors. Vs. Planman Media (India) Pvt. Ltd. being C.S. No. 57006/2016.

3. Thereafter, the Appellant immediately searched for the case record in the office of the Appellant, however the same was not traceable.

4. That immediately thereafter, the Appellant contacted the earlier counsel and requested him for the case file in the last week of September 2018, who handed over the case file alongwith certified copy of the Impugned Judgment and Decree only in the 2nd week of October, 2018.

5. Subsequently, the Appellant contacted the present counsel and instructed him to do the needful. Accordingly, the present counsel drafted the accompanying Appeal and filed the same before this Hon'ble Court."

[Emphasis supplied]

4. It is apparent from the above facts that, even according to the appellant, the judgment was passed on 08.06.2017, whereas its authorised representative, who was representing the appellant in the proceedings left its services only in August, 2018. This is approximately twelve months after the period of limitation for filing of the appeal would, in any event, have lapsed. There is absolutely no explanation in the application for the period from 08.06.2017 until August, 2018. Even assuming that the delay after August, 2018 was adequately explained, the delay before that has not been explained at all.

5. In deciding an application for condonation of delay, the Court must be satisfied that sufficient case has been shown and must also be mindful of the prejudice to the party, which has succeeded in the Trial Court. The decree, which was unchallenged until well after the period of limitation, creates or vests interest in the respondents, which must also be weighed against the possible prejudice to the appellant. In *Ramlal, Motilal and Chhotelal vs. Rewa Coalfields Ltd.* [(1962) 2 SCR 762], while construing Section 5 of the Indian Limitation Act, 1908, the Supreme Court *inter*



alia recognised that the expiration of the period of limitation for an appeal “gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties”, and held that “this legal right which has accrued to the decree holder by lapse of time should not be light-heartedly disturbed”. Similarly, in *University of Delhi vs. Union of India* [(2020) 13 SCC 745], the Court held that the accrued right or adverse consequence to the opposite party should be kept in perspective, and not dealt with lightly. It was further held that, if inordinate delay is condoned without considering the lackadaisical manner in which the appellant has proceeded, it would be contrary to public interest. The same principles have more recently been reiterated in *Majji Sannemma vs. Reddy Sridevi* [(2021) 18 SCC 384] and *Union of India vs. Jahangir Byramji Jeejeebhoy(D) Through His Lr* [2024 SCC OnLine SC 489].

6. As I do not find the averments in the application for condonation of delay to be sufficient, the application is dismissed and the appeal is also consequently dismissed, on the ground of limitation. The pending application stands disposed of.

7. The amount deposited in this Court alongwith interest accrued thereupon will be released to the respondent.

PRATEEK JALAN, J

OCTOBER 1, 2024 ‘Bhupi’/