

15th July,
2025
(AK)
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M.A.T 841 of 2013
IA No: CAN 1 of 2013
(Old No: CAN 5429 of 2013)

Bhagwati Developers Private Limited
Vs.
The Peerless General Finance and Investment Company
Ltd. and others

Mr. Ishan Saha
Mr. S. Rudra

...for the appellant.

Mr. Abhrajit Mitra
Mr. Soumya Ray Chowdhury
Ms. I. Hassan
Mr. S. Sarawgi
Mr. Aman Agarwal
Mr. Himangshu
Mr. Tapan Nag Chowdhury

...for the respondents.

1. The present application, bearing CAN 1 of 2013 (Old No: CAN 5429 of 2013), has been filed for condonation of the delay of about 262 days in preferring the instant appeal.
2. Learned counsel appearing for the appellant/petitioner submits that there were no laches on the part of the petitioner in occasioning the delay in preferring the appeal.
3. By placing reliance on the averments made in the condonation application, it is pointed out that the writ petition, from which the present appeal arises,

was being heard before the concerned learned Single Judge and was fixed 'For Orders' on July 16, 2012, on which date the erstwhile learned Advocate appearing for the petitioner had missed the matter in the list inadvertently and had not appeared at the hearing.

4. Subsequently, it is contended, when the matter was mentioned before the said learned Single Judge for being included in the list on May 3, 2013, the learned Single Judge was pleased to point out that the writ petition had already been disposed of on July 23, 2012.
5. It is contended that immediately thereafter, a certified copy was applied for in respect of the said judgment and upon obtaining the same, a change of Advocate was taken and the present appeal has been preferred.
6. As such, since there was no contemporaneous knowledge on the part of the appellant regarding the disposal of the writ petition, no steps were previously taken before May 3, 2013.
7. It is further argued by learned counsel for the petitioner that it is a well-settled principle of law that the litigants cannot suffer for the laches of their counsel.

8. Moreover, it is argued that in cases of condonation of delay, particularly since the period of delay is not so long, a lenient approach ought to be taken by courts.
9. Learned counsel also submits that the appeal, otherwise, has merits and ought not to be discarded at the threshold on the ground of limitation.
10. Learned senior counsel appearing for the respondents vehemently opposes the prayer for condonation and by placing reliance on the supplementary affidavit filed to the affidavit-in-opposition by the respondents to the condonation application, points out that the averment as to the matter being mentioned before the concerned learned Single Judge on May 3, 2013 is a charade.
11. It is submitted that since there was no subsisting interim order being suffered by the respondents, there could not have arisen any occasion for the respondent to so mention the matter.
12. Furthermore, learned senior counsel places reliance on paragraph no.12 of the supplementary affidavit of the respondents to show that a supplementary affidavit, mentioning about the disposal of the writ petition, had been affirmed on May 2, 2013 in connection with a different matter, being APO 346

of 1996 with APO 347 of 1996, a copy of which was served on the present appellant.

13. Thus, the appellant had full knowledge of the disposal of the writ petition on such date independently of any mentioning.
14. Thus, it is submitted that the equitable relief of condonation of delay ought to be refused in view of the attempt on the part of the petitioner to mislead the court by stating that it derived knowledge of the disposal of the writ petition for the first time upon mentioning the matter before the concerned Bench.
15. Learned senior counsel cites the judgment of *Pathapati Subba Reddy (Died) By L.Rs. and others vs. Special Deputy Collector (L.A.)* reported at 2024 SCC Online SC 513 for the proposition that the law of limitation is based upon public policy and there should be an end to litigation by forfeiting the right to remedy rather than the right itself.
16. A right or the remedy that has not been exercised or availed of for a long time, it was held, must come to an end or cease to exist after a fixed period of time.
17. It was further held that although a justice-oriented approach ought to be taken to do substantial justice, the same cannot be used to defeat the

substantial law of limitation contained in Section 3 of the Limitation Act.

18. Courts, it was held, are empowered to exercise discretion to condone the delay if sufficient cause has been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as where there is inordinate delay, negligence and want of due diligence.
19. It was observed by the Supreme Court that merely some persons having obtained a relief in a similar matter does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay.
20. More importantly, it was held that merits of the case are not required to be considered in condoning the delay.
21. Thus, it is argued by learned senior counsel for the respondent that the argument of the petitioner that the merits of the appeal are to be looked into cannot be accepted.
22. Learned senior counsel further cites *Rajneesh Kumar and another vs. Ved Prakash* reported at 2024 SCC Online SC 3380. In the said case, the Supreme Court had observed, inter alia, that it appeared that the entire blame had been thrown on

the head of the Advocate who was appearing for the petitioners in the trial court in the said matter.

23. The Supreme Court laid down that it had noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court has developed.
24. It was held that even if the court assumes for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.
25. The litigant therefore should not be permitted to throw the entire blame on the head of the Advocate and thereby disown him at any time and seek relief.
26. Learned senior counsel cites *Union of India and others vs. Nripen Sarma* reported at AIR 2011 SC 1237 for the proposition that even a delay of 114 days was refused to be condoned in the said case by the Supreme Court whereas in the present case, the delay is of 262 days.
27. Upon hearing learned counsel, we are of the opinion that whether the length of the delay is

inordinate is a matter of perception and depends on the facts and circumstances of each case.

28. In the present case, we desist from making a comment as to whether the delay of 262 days was inordinate or not, since the nature of the order impugned in the appeal and the urgency, if any, implicit in the necessity to prefer an appeal are not before us at this stage.
29. However, it is well-settled that a negligent litigant cannot be given the benefit of the liberal approach taken by courts while deciding condonation of delay applications.
30. As held by the Supreme Court in *Pathapati Subba Reddy (supra)*, although the courts may exercise discretion to condone the delay if sufficient cause has been explained, the power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors, including want of due diligence.
31. Although in the judgment of *Rajneesh Kumar (supra)*, the Supreme Court considered the long and inordinate length of the delay, irrespective of the same, it was independently held that the litigant should not be permitted to throw the entire blame on the head of the Advocate as a matter of rule and thereby disown him at any time and seek relief.

32. In the judgment of *Union of India vs. Nripen Sarma (supra)*, however, no proposition of law as such was laid down and as such we do not find that the said judgment operates as a binding precedent in the present context.
33. In the above backdrop, looking at the circumstances of the present case, we do not find that the aspect of diligence being exercised by the appellant has at all been reflected in the condonation application.
34. In paragraph no.4 of the condonation application, the appellant boldly states that the writ petition, from which the present appeal arises, was being heard before the concerned learned Single Judge on several occasions, including June 29, 2012 and July 6, 2012, and thereafter the writ petition had appeared for orders on July 16, 2012.
35. In view of the very fact that the writ petition was in the process of being heard on several dates, there could not have been any reason whatsoever for learned counsel for the appellant to be unaware of the fact that the matter was fixed for orders upon such hearing on July 16, 2012 and subsequently disposed of on July 23, 2012.
36. Even if we take the best case of the appellant/petitioner, the Advocate for the appellant

might have missed the matter from the list on the said date. However, the said fact itself shows utter negligence on the part of the said learned Advocate, since in an ongoing hearing, it is the incumbent duty of counsel to attend the matter on the next date fixed.

37. Even that apart, we are unable to accept that the appellant, being a company engaged in development of real estate, was represented by so naïve people that despite being aware of the hearing going on in the matter, they failed to take any information contemporaneously as to what happened and about the next date fixed for orders, that is, July 16, 2012 and the subsequent disposal of the writ petition on July 23, 2012.
38. We are also unable to accept that any Advocate worth his mettle would not be informing his client about the ongoing hearing of a matter on several dates, for instructions, material or otherwise, at the relevant point of time.
39. Thus, the court cannot be taken to be so gullible to accept the contention of the appellant that there was no occasion for the appellant itself to take information as to the outcome of the ongoing hearing of the writ petition, particularly since the next date was fixed during hearing on July 16,

2012 for passing orders and the writ petition was disposed of finally on July 23, 2012.

40. Thus, the negligence on the part of the appellant itself, even apart from its Advocate, at the relevant point of time has not been explained away at all in the condonation application or the reply filed by the appellant.
41. Even if we extend the benefit of doubt to the appellant insofar as the matter being mentioned on May 3, 2013, it could not have been the first date on which the appellant became aware of the disposal of the writ petition long back on July 23, 2012 if it had a wee bit of diligence.
42. Even otherwise, it appears to be too much of a coincidence that supplementary affidavit was affirmed by the present respondent in a different matter on May 2, 2013 and served on the present appellant contemporaneously and out of the blue, the respondents mentioning the matter for inclusion in the list, after one year from its previous date of hearing, precisely on May 3, 2013, that is, the very next date after the disposal of the writ petition was disclosed in the respondents' supplementary affidavit.

43. Such co-incidence itself also indicates that the mentioning was done merely to furnish a cause of action for the present condonation application.
44. Thus, in the circumstances of the case, the ratio laid down in *Rajneesh Kumar (supra)* is squarely applicable and it is quiet transparent that the appellant/petitioner is trying to shift the entire blame on the erstwhile learned Advocate for the negligence on the part of the petitioner itself in not taking any information although the writ petition was taken up for hearing consecutively on June 29 and July 6, 2012.
45. Before parting that the matter, we cannot but also notice that even as per the pleadings in the condonation application, after coming to know of the disposal of the writ petition at the relevant period, the appellant chose the self-same erstwhile Advocate to apply for certified copies and get the same ready and only thereafter chose to have a change of Advocate and engage someone else as its Advocate.
46. Hence, even after knowing of the dismissal of the matter, the appellant had reposed faith in its erstwhile Advocate inasmuch as the obtaining of the certified copies and obtaining advice to prefer an appeal was concerned.

47. In view of the above circumstances, we are unable to accept that sufficient cause and/or due diligence has been made out on the part of the appellant for prompting us to condone the delay of 262 days in preferring the appeal.
48. It is trite law that the number of days is not so important as a factor, but the appellant at least has to show its diligence at the relevant point of time in conduct of its litigation to get the benefit of condonation of delay in preferring the appeal.
49. Such diligence being lacking in the present case, we are unable to allow the application.
50. Accordingly, CAN 1 of 2013 (Old No: CAN 5429 of 2013) is dismissed on contest.
51. Consequentially, MAT 841 of 2013 stands dismissed as time-barred.
52. All connected other applications, if pending, stand disposed of as well.
53. Interim orders, if any, also stand vacated.
54. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)