IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IPDPTA/9/2025
IA NO: GA-COM/1/2025

DONG A ST CO LTD
VS
THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 1st September, 2025.

Appearance:
Mr. Rudraman Bhattacharyya, Sr. Adv.
Mr. Varun Kothari, Adv.
Mrs. Urvashi Jain, Adv.
...for the appellant.

Mr. Amal Kumar Datta, Adv.
...for the Union of India.

The Court: This is an application for condonation of delay in the filing of this appeal.

It is submitted on behalf of the appellant that there has been a delay of only 9 months in the filing of the appeal. The admitted facts of the case are that the impugned order was passed on the 22nd January, 2022. By a communication dated 22nd May, 2024, addressed by the Advocates of the appellant, the appellant had intimated the office of the Controller that they had not been officially communicated the impugned order and it was only after making enquiries with their office that it transpired that the impugned order had a different application number which required correction. As a consequence, it is only on 19 June 2024 that the revised refusal order was served on the appellant. Significantly, there is nothing in the body of the application explaining or justifying any grounds to justify the delay in the filing of this appeal.

The only case which is sought to be made out in the Reply for the first time is that the impugned order pertained to a different Patent Application Number and therefore, the request by the appellant to the Office of the patent for correction of the application number. The appeal was ultimately filed in March 2025 after a delay of 4 years since the passing of the impugned order.

It is well settled that orders seeking condoning the delay are not to be passed in a casual, routine or mechanical manner. There has to be sufficient explanation justifying the condonation if delay.

In an unreported decision dated 25 November 2024 passed in *IPDPTA/118/2023 Azionaria Costruzioni Macchine Automatiche Acma Vs The Controller Of Patents And Designs & Anr.*, it was held as follows:

> *" The discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Act cannot be liberally interpreted if negligence, inaction or lack of bona fides is apparent. There is simply no power to condone delay on equitable grounds.*
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> *In Pathapati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector Special Leave Petition (Civil) no. 31248 of 2018, it has been held as follows:*
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> > *"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*
> >
> > *(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
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> > *(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
> >
> > *(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
> >
> > *(iv)In order to advance substantial justice, though liberal approach, 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 containedinSection3ofthe Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had 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;

(vi) Merely because some persons obtained relief in similar matter, it 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 in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning 4 the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

Similarly, in *Basawaraj and Anr. vs. Special Land Acquisition Officer, (2013) 14 SCC 81* it has been held:

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute." "15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition

whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

In the facts of the instant case, there is nothing in the body of the petition which explains or justifies the delay in the filing of the appeal. There is simply no explanation even attempted to be put forward by the appellant. The entire story of the order being passed in a different matter has been made out for the first time in the Affidavit in Reply.

The admitted delay on the part of the appellant even from the date of receipt of the order dated 19 June, 2024 is approximately 9 months. The appellant has been sleeping over its rights and cannot justify any ground whatsoever to condone the delay. There is an absence of justification in seeking condonation even in respect of the 9 months period. In such circumstances, the prayer for condonation of delay stands rejected.

In view of the above, there is no merit in the application. GA-COM/1/2025 stands dismissed.

IPDPTA/9/2025 also stands disposed of.

(RAVI KRISHAN KAPUR, J.)

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