

OCD-24

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

IPDAID/46/2024

QUALCOMM INCORPORATED
VS
THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 28th January, 2025.

Appearance:

Mr. Nikunj Berlia, Adv.

Mr. Varun Kothari, Adv.

Ms. Mosarat Rayaj, Adv.

Ms. Urvashi Jain, Adv.

...for the appellant

Mr. Sunit Kr.Singhania, Adv.

Ms. S.i Jain, Adv.

...for the respondent

The Court: The appellant seeks condonation of delay of 964 days in filing the present appeal.

The appeal is directed against an order dated 29th September, 2020 passed under Section 15 of the Patent Act, 1970.

The grounds seeking condonation are that due to the impact of Covid-19 and the fact that the appellant is a foreign entity based in the United States of America the appeal could not be notarized within the prescribed time period. In this background, the appellant prays for condonation of delay.

The respondent Controller is represented and opposes the prayer for condonation. It is submitted that there are no grounds whatsoever which have been made out to condone the delay in the filing of this appeal.

In reply, it is submitted that excluding the Covid-19 period, the delay is approximately 446 days and the same should be considered sympathetically since the appellant is based out of the country.

In *Basawaraj & Another vs. Special Land Acquisition Officer* reported at (2013) 14 SCC 81, it has been held as follows:

“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 *Pathapati Subba Reddy (Died) By L.Rs. and Others vs. Special Deputy Collector (LA)* (2024) 4 S.C.R. 241, it has been held as follows:

“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;

- (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 contained in Section 3 of the 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 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 the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."*

In any view of the matter, there has been an inordinate, unexplained and unjustified delay in the filing of this appeal which is not worthy of condonation. The appellant has been sleeping over its rights for a considerable period of time. There is no cause far less sufficient cause to condone the delay in the filing of this appeal. The appellant has been casual, indolent and deserves no discretion being exercised in its favour. The grounds alleged seeking condonation have no merit and do not justify the delay in the filing of this appeal. This appeal is hopelessly time barred and is dismissed.

With the above directions, IPAID/46/2024 stands dismissed.

(RAVI KRISHAN KAPUR, J.)