



2025:DHC:6977



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

% ***Date of Decision: 14th August, 2025***

+ CM(M) 744/2018

M/S HI TECH CONSTRUCATIONS ENGINEERS & BUILDERS
.....Petitioner

Through: Mr. Praveen Kumar, Advocate.

versus

M/S KUBER BUILDER (A UNIT OF KUBER GROUP)

.....Respondent

Through: None.

+ CM(M) 747/2018

M/S HI TECH CONSTURCTIONS ENGINEERS & BUILDERS
.....Petitioner

Through: Mr. Praveen Kumar, Advocate.

versus

M/S R.K BUILDER (A UNIT OF KUBER GROUP)Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The point raised in both the abovesaid petitions is identical and, therefore, these are being taken up together.
2. Petitioner had decree(s) in their favour and armed with those, they filed separate execution petitions which were registered as Ex. No 75/2005 and Ex. No. 76/2005.
3. These Execution Petitions were, however, not pursued in the desired

CM(M) 744/2018 and CM(M) 747/2018



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manner and were, resultantly, dismissed for *non-prosecution* on 29.01.2010.

4. After around seven years, the decree holders moved applications seeking restoration thereof and along with restoration applications, they also moved application(s) under Section 5 of Limitation Act, 1963, seeking to condone the delay.

5. The sole reason assigned in the abovesaid applications, whereby they were seeking condonation of delay, was to the effect that neither the decree holder nor their counsel could appear before the learned Executing Court when the matter was called on said date and that their non-appearance was neither intentional nor deliberate. It was also mentioned that the Execution Petitions had been transferred and, somehow, decree holder never learnt about such transfer and, therefore, they were in no position to appear before the learned Transferee Court, which, eventually, resulted in dismissal of Execution Petitions for *non-prosecution*.

6. Their such request has been denied which has resulted into filing of the present two petitions.

7. However, this court does not find any reason to interfere with the impugned order(s) whereby, their applications have been dismissed and the petitions have been refused to be restored.

8. The assertions made in the applications, seeking restoration and condonation in delay, do not evoke any confidence and lack any merit or substance.

9. Merely, because of the fact that the Execution Petitions had been transferred in the interregnum, the petitioners cannot expect to earn any compassion and seek condonation of delay of seven years, four months and fifteen days.



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10. The learned Executing Court had dismissed the Execution petitions on 29.01.2010, while observing that neither the decree holder nor their counsel had been appearing for the last several dates of hearing. The various previous order-sheets would also indicate that there was no appearance from the side of decree holder. The last recorded appearance is of 19.09.2008, when the decree holder had sought adjournment to provide fresh address of judgment debtor.

11. Thereafter, there is complete inaction and lull from their side.

12. Undoubtedly, the execution petitions were transferred to another Court on 13.03.2009 but that itself would not mean anything substantial. It cannot be heard and imagined that on account of such transfer, they were completely incapacitated to find out its status and were, therefore, unable to put any appearance before the learned Transferee Court on 29.01.2010. They have not bothered to elucidate as to what steps were taken by them to find out the status of their Execution Petitions and how and in what manner, they, finally, learnt about dismissal of their petitions. The applications are, regrettably, bereft of any details.

13. The period in question is not a small one and, clearly, there exists no cause, much less a sufficient one.

14. Reference be made to *Union of India vs Jahangir Byramji Jeejeebhoy: SCC OnLine SC 489* wherein Hon'ble Supreme Court has observed that length of delay is also a relevant fact which the Court should take into account while considering whether the delay should be condoned or not. It observed that the Court owed a duty to first ascertain the *bona fides* of the explanation offered by the parties seeking condonation and it is only when *sufficient cause* is assigned, the Court may bring in to aid the merits of



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the matter for the purposes of condoning the delay. It also observed that the question of limitation was not merely a technical consideration and the rules of limitation were based on *principles of sound public policy and principles of equity* and “*Sword of Damocles*” cannot be kept hanging for indefinite period and the Hon’ble Supreme Court while taking note of various precedents refused to condone the delay of 12 years observing that delay could not be taken as ‘*a matter of generosity*’ and since the applicants had failed to prove that they were reasonably diligent in prosecuting the matter, the vital test for condoning the delay was not satisfied.

15. The situation is, virtually, the same here.

16. The learned Executing Court, on careful perusal of the entire matter, came to the conclusion that the decree holder had not been able to explain as to why it took them so long in filing the above applications.

17. More importantly, the decree holder is not an individual. It’s rather a proprietary concern and it is not expected that such concern would not keep track of their matters, more so, when the decree is not of a **small** amount. Their sole excuse “*that they were not aware of the transfer of the petitions*” is wholly untenable and rather reflects complete absence of due diligence. It is rather suggestive of gross negligence and lacklustre approach. This Court, therefore, is not inclined to interfere and does not find any reason to condone the delay for want of any plausible justification.

18. Admittedly, even if filing of fresh application in the year 2017 is taken as a new Execution petition, reckoned from the date on which the decree was passed, the same is hit by limitation.

19. The last-ditch effort to seek relief by shifting the entire onus to the previous counsel is also of no avail as this Court in *Moddus Media Pvt. Ltd.*



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vs. Scone Exhibition Pvt. Ltd.: 2017 SCC Online Del8491 has observed that a litigant owes duty to be vigilant of his rights and is expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. It was further observed that litigant cannot be permitted to cast the entire blame on the advocate with a view to get the delay condoned.

20. Be that as it may, finding no illegality or perversity in the impugned orders, both the present petitions are dismissed.

(MANOJ JAIN)
JUDGE

AUGUST 14, 2025/sw/shs