

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.1958 OF 2024
IN
COMMERCIAL APPEAL (ST) NO.17109 OF 2023

Union of India through the Indian Navy	..	Applicant
In the matter of		
Union of India through the Indian Navy	..	Appellant
vs.		
MS.Nordlake GmbH & Anr.	..	Respondents

Mr. Rahul Narichania, Senior Advocate a/w Mr.Siddharth Chabria, Ashish Mehta and Yash Kataria i/b Ethos Legal Alliance for the Appellant/Applicant.

Mr.Atul Rajadhyaksha, Senior Advocate a/w Mr.Sunip Sen, Mr.Adil Patel, Ms.Sanika Kulkarni and Mr.Amogh Dabholkar for Respondent.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 24th MARCH 2026

P.C. :

1 The present Interim Application seek condonation of delay of 55 days in filing the Appeal being aggrieved by the impugned Judgment dated 17/02/2023 passed in Notice of Motion in Commercial Admiralty Suit.

2 We have heard the learned senior Advocate Mr.Narichania for the Applicant and perused the application.

The Application faces strong objection from the learned senior Advocate Mr.Rajadhyaksha who would submit that he has preliminary objection about maintainability of the Appeal under Section 13(1A) of the Commercial Courts Act, 2015 and this objection ought to have been pronounced before the application for condonation of delay is to be heard.

3 We do not agree with this submission as we find that only if the delay is condoned, the Appeal become liable to be entertained and that if objection is raised about its maintainability, it would be decided at the relevant stage, when the Appeal itself is registered and taken up for consideration.

4 The Interim Application seeking condonation of 55 days has specifically set out the reasons and we deem it appropriate reproduce the same :-

“4. The Impugned Order was passed on 17th February, 2023. The Applicant applied for certified copy of the Order on 22.02.2023. The Certified Copy was ready on 24.02.2023 and the Applicant received the same on 03.03.2023. The above Appeal is being filed on 16.06.2023. There is thus a delay of 49 days in filing the above Appeal.

5. Given the quantum of the claim, the matter was referred to the Ministry of Defence for instructions and further action.

6. As per the extant procedures followed in Court cases of the Indian Navy, the decision about challenging an Order of a Court is deliberated at various levels including Ministry of Defence and Ministry of Law and Justice and only after necessary clearances and approvals from Senior Officers are received from Naval Headquarters, an Order is challenged or a litigation filed.

7. In the instant case since there are complex issues involved having financial implication, and therefore necessary instructions were also sought from the Officials of Ministry of Finance. It is also respectfully submitted that the said Officers and Senior Officials were busy in certain affairs of national importance and hence there is a delay in filing the above Appeal. The decision to challenge the Order was received on 21 April 2023 and necessary actions were initiated accordingly. Hence the delay was not wilful, due to any negligence or mala fide. The Applicant acted as expeditiously as possible, but due to issues relation to national security, the decision to file the Appeal was delayed.”

5 Mr.Narichania in support of the Application would submit that since there was involvement of the Ministry of Defence, the Department had to undergo the rigmarole of obtaining necessary opinions and seeking further approvals before Appeal was to be instituted and we find that sufficient cause has been made out for condoning the delay which is of a minuscule period of 55 days.

6 The reliance by Mr. Rajadhyaksha upon the decision in case of *Shivamma (Dead) by Lrs. vs. Karnataka Housing Board and Others, 2025 SCC OnLine SC 1969* is not of any succor as though the proposition of law laid down is that the delay by the Government or its agencies must also be viewed seriously and shall not be overlooked merely because a particular procedure has to be followed and the file has to be moved from Department to Department, according to us, the same is not laid down as an absolute proposition and in any case when an Application for condonation of delay has to be filed, the Court should be satisfied about the genuineness of the explanation that is offered and if the sufficiency of the cause convince the Court and in the present case since we find that the delay is of mere 55 days and not of some years, we are convinced to condone the same, in the wake of

the explanation offered in Para 6 and 7.

Even on testing the bonafides of the reasons that have been cited, we deem it appropriate to condone the delay.

Interim Application is made absolute in terms of prayer clause (a).

Needless to state that the objection raised by the learned senior counsel Mr.Rajadhyaksha about the Appeal being entertained under Section 13 of the Commercial Courts Act, shall be duly considered.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]