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

% *Judgment reserved on: 20.11.2024*
Judgment pronounced on: 26.11.2024

\+ **RFA 797/2024**

M/S PROGRESSIVE CONSTRUCTION LTD .....Appellant

Through: Mr. Chinmoy Pradip Sharma, Senior Advocate with Mr. Shailesh Kumar Sinha, Mr. Ashish Pandey, Mr. Suman Kumar, Mr. Shubhanshu Singh and Mr. Irfan Hasieb, Advocate

versus

HIMADRI SHANKAR ROY & ANR. .....Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

GIRISH KATHPALIA, J.:

CM APPL. 67537/2024 (Application under Sections 5&14, Limitation Act)

1. By way of the application under consideration, the appellant seeks condonation of delay of 4486 days in filing the appeal to assail money recovery decree. Having heard learned senior counsel for appellant at length and having perused the records, I found it not fit case to even issue notice of the application to the other side.

2. Briefly stated, the circumstances pleaded by the appellant in order to explain this inordinate delay in filing the appeal are as follows. During

pendency of the suit, which culminated in the impugned judgment and decree dated 18.09.2012, counsel for the appellant (*defendant no. 1 before the trial court*) stopped appearing without any intimation to the appellant, leaving the appellant under an impression that the matter was being pursued by the counsel. In the year 2011, due to changes in management and financial constraints, the appellant company closed its office in New Delhi and thereafter their authorized representative left job without updating status of the suit, due to which the appellant company lost track. On 27.09.2019, the appellant company received demand notice under Insolvency and Bankruptcy Code (IBC) issued by the present respondent no. 1 and it is only after receipt thereof, that the appellant came to know about disposal of the suit. On 15.10.2019, the appellant received certified copy of the impugned judgment and decree, after which on 29.11.2019, the appellant filed an application under Order IX Rule 13 CPC seeking setting aside of the ex-parte judgment and decree. The said application under Order IX Rule 13 CPC was dismissed on 20.09.2024. However, according to record, the said application under Order IX Rule 13 CPC was dismissed on 27.05.2024, which order was challenged by the appellant before this Court and a co-ordinate bench allowed the counsel for appellant to withdraw the said appeal (*FAO 300/2024*) when the learned counsel for appellant stated that the judgment and decree dated 18.09.2012 was not an ex-parte judgment and decree, so appropriate remedy should have been to challenge the same by way of Regular First Appeal instead of filing an application under Order IX Rule 13 CPC. The present appeal was filed on 08.10.2024. Hence, the present application.

3. During arguments, learned senior counsel for appellant took me through the aforesaid and contended that this is a fit case to condone the delay of 4486 days in filing the present appeal. Learned senior counsel for appellant contended that the delay from 18.09.2012 to 27.09.2019 is explainable on the ground of professional misconduct of their earlier counsel, who stopped appearing before the trial court without any intimation to the appellant; and that the period from 27.09.2019 to 20.09.2024 is explainable on the ground that during the said period, the appellant was *bona fide* pursuing the remedy under Order IX Rule 13 CPC, so it is entitled to benefit under Section 14 of the Limitation Act. During arguments, in response to a specific query, learned counsel for appellant submitted that the appellant has not taken any action against the erstwhile counsel for his alleged professional misconduct.

4. In the backdrop of above conspectus, this Court is called upon to test the case set up by the appellant on the anvil of Section 5 and Section 14 of the Limitation Act.

5. As regards Section 5 of the Limitation Act, the undisputed propositions of law as culled out of various judicial precedents are as follows. Where an applicant is able to satisfy the court that he was precluded from filing the appeal or application other than an application under any of the provisions of Order XXI CPC from circumstances beyond his control, the court has discretion to condone the delay in filing the appeal

etc. Like any other discretion, the discretion under Section 5 of the Act also must be exercised judiciously, keeping in mind the principles evolved across time. One of those principles evolved across time is that the sufficiency of cause set up by the applicant under Section 5 of the Act must be construed liberally in favour of the applicant. Unless no explanation for delay is submitted or the explanation furnished is wholly unacceptable, the court must liberally condone the delay, if third party rights had not become embedded during the interregnum. It is not the length of delay but the sufficiency of cause which has to be examined by the court, in the sense that if there is sufficient cause, delay of long period can be condoned but if it is otherwise, delay of even a few days cannot be condoned. The purpose of construing the expression "sufficient cause" liberally is to ensure substantial justice when no negligence or inaction or want of *bona fides* is attributable to the applicant.

5.1 No doubt, for the fault of counsel, the litigant should not be made to suffer. But that cannot be a blanket rule. Each case has to be examined on its peculiar factual matrix. The protection of the said rule, which can in appropriate cases be extended to an illiterate lay person, cannot be extended to an educated litigant or a corporate entity or the government bodies. Merely by engaging a counsel, the litigant cannot claim to be not under a duty to keep track of the case. Most importantly, where the applicant attributing such delay to the professional misconduct of the counsel opts not to take any action against the counsel, his explanation cannot be believed. Condoning delay in such circumstances, believing the bald allegations of the

applicant would be tantamount to condemning the erstwhile counsel without hearing him and that too on judicial record.

5.2 In the case of ***Ramlal vs Rewa Coalfields Ltd.***, AIR 1962 SC 361, the Hon'ble Supreme Court of India observed thus:

> *"7. In construing Section 5(of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree holder by the lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal.* ***This discretion has been deliberately conferred upon the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice****."*
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> *(emphasis supplied)*

5.3 In the case of ***Finolux Auto Pvt. Ltd. Vs Finolex Cables Ltd.***, 136(2007) DLT 585(DB), a Division Bench of this Court held thus:

> *"6. In this regard, we may refer to a decision of the Supreme Court in* ***P.K. Ramachandran vs State of Kerala****, IV(1997) CLT 95 (SC). In the said decision, the Supreme Court has held that* ***unless and until a reasonable or satisfactory explanation is given, the inordinate delay should not be condoned****. In para 6 of the judgment, the Supreme Court has laid down in the following manner :*
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> *"****Law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.*** *The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for*

condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."

(emphasis supplied)

5.4 In the case of ***Pundlilk Jalam Patil (dead) by LRs vs Executive Engineer Jalgaon Medium Project***, (2008) 17 SCC 448, the Hon'ble Supreme Court of India held that basically the laws of limitation are founded on public policy and the courts have expressed atleast three different reasons supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, and (iii) that persons with good causes of action should pursue them with reasonable diligence. It was observed that the statutes of limitation are often called as statutes of peace insofar as an unlimited and perpetual threat of limitation creates insecurity and uncertainty which are essential for public order.

5.5 In the case of ***Lanka Venkateshwarlu vs State of Andhra Pradesh***, (2011) 4 SCC 363, the Hon'ble Supreme Court of India observed thus :

"19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country including this court adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act".

The concepts of "liberal approach" and "reasonableness" in the exercise of discretion by the courts in condoning delay were considered by the Hon'ble Supreme Court of India in the case of ***Balwant Singh vs Jagdish Singh***, (2010) 8 SCC 685, holding thus :

"25. We may state that ***even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned****. The purpose of introducing liberal construction is normally to introduce the concept of "reasonableness" as it is understood in its general connotation.*

26. The law of limitation is a substantive law and has definite consequences on the rights and obligations of party to arise. These principles should be adhered to and applied appropriately depending upon the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. ***If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly****.*

27. ….

28. …. ***The concepts such as "liberal approach", "justice oriented approach" and "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially in cases where the court concludes that there is no justification of the delay****...."*

(emphasis supplied)

5.6 In the expressions of this Court in the case of ***Shubhra Chit Fund Pvt. Ltd. vs Sudhir Kumar***, 112 (2004) DLT 609, too much latitude and leniency will make provisions of the Limitation Act otiose, which approach must be eschewed by courts.

5.7 In the case of ***Pathapati Subba Reddy (died) by LRs & Ors. vs The Special Deputy Collector (LA),*** 2024 SCC OnLine SC 513 the Hon'ble

Supreme Court recapitulated the scope of Section 5 Limitation Act and held thus:

> *"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".*

5.8 So far as the issue regarding professional misconduct of the counsel is concerned, the Hon'ble Supreme Court in the case of ***Salil Dutta vs T.M. & M.C. Private Ltd,*** (1993) 2 SCC 185 held thus:

> *"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him.* ***It is true that in certain situations, the court may, in the interest of justice, set***

aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. *The observations made in Rafiq [(1981) 2 SCC 788 : AIR 1981 SC 1400] must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear — they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted".*

(emphasis supplied)

5.9 In the case of ***Moddus Media Private Ltd. vs Scone Exhibition Pvt. Ltd.,*** 2017 SCC OnLine Del 8491, this Court observed thus:

"13. ***The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate.*** *It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree.* ***After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or***

significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences".*

(emphasis supplied)

5.10 Most recently on 21.11.2024, in the case of ***Rajneesh Kumar & Anr. vs Ved Prakash,*** 2024 SCC OnLine SC 3380, the Hon'ble Supreme Court dealt with the situation where the applicant coming under Section 5 of the Act attributed the delay in filing the appeal to his erstwhile counsel, and observed thus:

> *"10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court.* ***We have 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. Even if we assume 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.*** *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".*
>
> *(emphasis supplied)*

6. Falling back to the present case, as mentioned above, the delay in filing the appeal is not for an insignificant period; it is an inordinate delay of 4486 days. The impugned judgment and decree being dated 18.09.2012, the

period of limitation prescribed for filing appeal expired on 17.12.2012. The delay till 29.11.2019 (*the date of filing of application under Order IX Rule 13 CPC*) has been attributed by the appellant company to the professional misconduct of their erstwhile counsel. The appellant is not an individual litigant, much less an illiterate lay person. The appellant is a limited company. Admittedly, the appellant was being represented through an employee of theirs, who left job. That being so, the appellant cannot claim no duty to be diligent in keeping track of the *lis*. Further, as mentioned above, during arguments learned counsel for appellant submitted that no action has been taken against the erstwhile counsel for his alleged misconduct. In other words, the erstwhile counsel is not even aware that he is being blamed for the default. In such circumstances, I find it difficult to believe the stand taken by the appellant. For, believing the version of the appellant that the said delay of about seven years took place due to professional misconduct of their erstwhile counsel would mean condemning the said counsel unheard, that too, on judicial record. I find no satisfactory explanation set up by the appellant to explain their having not filed the appeal during the period from 17.12.2012 to 29.11.2019.

7. The period from 29.11.2019 to 20.09.2024 has been explained by the appellant, pleading that they filed application under Order IX Rule 13 CPC, which got dismissed, so they filed the present appeal on 08.10.2024. The appellant has claimed benefit under Section 14 of the Limitation Act for the said period of almost five years.

8. Section 14 of the Act stipulates thus:

> *"14. Exclusion of time of proceeding bona fide in court without jurisdiction. —*
> *(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
> *(3) Notwithstanding anything contained in rule 2 of Order XXXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.*
> *Explanation.— For the purposes of this section,—*
> *(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*
> *(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*
> *(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction".*

One of the vital ingredients of Section 14 of the Act is the good faith of the applicant. Where an act of the applicant is found to lack good faith, benefit of Section 14 of the Act cannot be extended. The expression "good faith" is defined under Section 2(h) of the Limitation Act, stipulating that nothing shall be deemed to be done in good faith which is not done with due care

and attention. What is to be seen is as to whether the institution and prosecution of the other proceeding in wrong forum was done with due care and attention, thereby in good faith. Another requirement of Section 14 of the Act is that the applicant must have been prosecuting the previously instituted proceedings with due diligence. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by reasonable and prudent person under the particular circumstances.

9. In the present case, complete lack of due care and attention is writ large on the face of record. According to the appellant's own case, for the first time they became aware of the impugned judgment and decree upon receipt of demand notice on 27.09.2019 and filed application under Order IX Rule 13 CPC on 29.11.2019, which application was dismissed by the trial court vide order dated 27.05.2024. Even thereafter, the appellant preferred appeal against that order and the same was withdrawn on 20.09.2024 admitting that the impugned judgment and decree was not ex-parte one. There is not even a whisper in the impugned judgment that it was being passed ex-parte. Even counsel for the appellant was conscious that the impugned judgment and decree was not ex-parte and that is the reason, the appeal FAO 300/2024 was withdrawn on 20.09.2024. Evidently, the appellant first filed the application under Order IX Rule 13 CPC without there being ex-parte judgment and decree, and thereafter, continued to prolong the application from 29.11.2019 to 20.09.2024 i.e., almost five years. By any liberal standards, it cannot be treated as proceedings pursued by the appellant in good faith. Therefore, for the period from 29.11.2019 to

20.09.2024, benefit of Section 14 of the Act cannot be granted to the appellant. In any case, since for the first part of delay period of almost seven years no sufficient cause has been shown, thereby disentitling the appellant benefit under Section 5 of the Act, for the subsequent part of delay period of more than five years, no benefit under Section 14 of the Act can be granted.

10. I am unable to find it a fit case to condone the colossal delay of 4486 days in filing the present appeal. Therefore, the delay condonation application is dismissed.

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11. Consequently, the appeal and the accompanying applications are dismissed as barred by limitation.

GIRISH KATHPALIA

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GIRISH KATHPALIA
(JUDGE)

NOVEMBER 26, 2024/as