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

% **Reserved on: 13 December 2024**
Pronounced on: 21 January 2025

\+ CM(M) 3575/2024

WALNUT PICTURES AND ORS .....Petitioners

Through: Mr. Mohd. Umar and Mr.Kanav Madnani, Advocates.

versus

RAJYESH PATNI .....Respondent

Through: Mr. Vishal Mann and Mr. Jayant Tewetia, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present petition under Article 227 of the Constitution of India impugns the order dated 21.05.2024, passed by the learned District Judge, Commercial-06 (South East), Saket Court, New Delhi in CS (COMM) 409/2023, titled as, “Rajyesh Kumar Patni vs. Walnut Pictures & Ors”.

2. On 03.07.2023, the learned Trial Court issued directions for issuance of summons to the petitioners and the matter was adjourned for 03.10.2023.

3. On 03.10.2023, the attendance of counsel for petitioners stands recorded in the order-sheet of the date.

4. The petitioners did not file the Written Statement [hereinafter, "**WS**"], and therefore, on the next date i.e. 09.11.2023, the right of the petitioners to file the WS was closed in the light of law laid down by the Hon'ble Supreme Court in **SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors.**

5. Petitioners tried to file the WS alongwith supporting affidavit, statement of truth, affidavit of admission/denial and application for condonation of delay on 28.11.2023. After removal of defects marked by the Registry, fresh e-filing was done on 29.11.2023 and the hardcopy of WS was filed in learned Trial Court on 30.11.2023.

6. The respondent took objection that the right of petitioners to file the WS has already been closed, no application for review of order dated 09.11.2023 having been filed, and the application for condonation of delay in filing the WS is not maintainable. However, the learned Trial Court rejected the contention of respondent stating that the application for condonation of delay will also be treated as application for review of order dated 09.11.2023.

7. Aggrieved by the decision of the learned Trial Court to entertain the application of petitioners, respondent filed an application for review.

8. Vide order dated 21.05.2024, the learned Trial Court disposed of the review application dated 16.01.2024 filed by the respondent, while taking the view that the application for condonation of delay should not be dismissed only on the technical reason that separate application for review of order closing the right to file the WS has not been moved or prayer for review has not been made in the same

application. However, the application of the petitioners under Order VIII Rule 1 CPC was dismissed on the ground that there has been deliberate delay on the part of the petitioners in filing the WS and the intention appears to be to delay the matter as far as possible. The learned Trial Court was of the view that WS was ready on 08.11.2023, but the petitioners have failed to explain as to why they did not try to file the WS through e-filing on 08.11.2023 itself. The relevant paras of the order are extracted as under:-

> "27. Ld. Counsel for the defendants has not explained as to why the defendants did not try to file the WS through e-filing on 08.11.2023. Ld. Counsel has also not explained as to why she did not inform the court on 09.11.2023 that the WS was ready. The WS was verified at Mumbai and it might take some time for the hard copy to arrive at Delhi but the e-filing could have been done and the court could have been informed on 09.11.2023 that the WS was ready.
> 28. Though, the WS was ready on 08.11.2023, the attempt to do efiling was made only on 28.11.2023. There is no explanation as to why it was not done earlier. On 28.11.2023 also the e-filing was defective and it was ultimately rejected on 29.11.2023. After removal of the defects, fresh e-filing was done on 29.11.2023 and the hard copy was filed in the court on 30.11.2023. What could be the reason if not the intention to delay the matter as much as the defendants could. If we take the date of service as 20.08.2023, WS has been filed after 99 days from the date of service. It is stated in the application that the defendants belong to Mumbai and they needed time to engage a counsel at Delhi and to gather the facts. Even if this is accepted, there is no reason for the defendants not moving an application for extension of time at least on 03.10.2023 when the Ld. Counsel for the defendants appeared and filed the vakalatnama. I am of the view that the defendants have failed to disclose any justifiable reason for not filing the WS within 30 days from the date of service.
> 29. On the aspect of the approach at the time of considering the prayer for condonation of delay Ld. Counsel for the defendants has relied upon judgments by Hon'ble Supreme Court in ***Raheem Shah & Ors. Vs. Govind Singh & Ors. MANU/SC/0829/2023 and Ramlal Motilal and Chhotelal Vs. Rewa Coalfields Ltd. MANU/SC/0042/1961***.

> 30. The observations made in Raheem Shah (supra) are in light of the stand taken by the appellants that they were not aware of the judgment and therefore, there was delay of 52 days in filing of the appeal. The observations have to be applied according to the facts of the case. In the present case, the defendants did not move application for extension of time, did not inform the court that the WS was ready and did not file the WS and application for condonation/recall with alacrity. It has been held by Hon'ble Supreme Court in ***C. Ronald Vs. UT Andaman & Nicobar Islands (2011) 12 SCC 428*** that judgments are not to be treated as Euclid's theorem and not to be read as enactments. In the present case there has been deliberate delay on part of the defendants in filing the WS and the intention appears to be to delay the matter as far as possible. The judgment in Ramlal (supra) also does not help the defendants as this is not a case of mere lack of diligence."

9. Learned counsel for petitioners has submitted that petitioners are based in Mumbai and that the WS was signed by Mr. Raj Roy, Authorised Representative ['**AR**'] and was notarized on 08.11.2023 in Mumbai. However, due to inadvertent error, supporting affidavit of WS, statement of truth, affidavit of admission/denial as well as application for condonation of delay were not signed by Mr. Raj Roy alongwith WS and as such, the same could not be e-filed on 08.11.2023. It is further submitted that AR of petitioners was not available for signatures until 24.11.2023 due to professional commitments and he could sign the relevant documents only on 24.11.2023, whereafter e-filing was done on 29.11.2023 and hard copy was filed in Court on 30.11.2023.

10. It is submitted that even though the WS was ready on 08.11.2023, the same could not have been taken on record without supporting affidavit of WS, statement of truth, affidavit of admission/denial and application for condonation of delay, as

mandated by law.

11. It is further submitted that petitioners have filed the WS within the condonable period from the date of service of summons. It is contended that petitioners had no intention to delay the trial and in the alternative, the delay if any caused in filing the WS, can be compensated with cost.

12. Per contra, learned counsel for respondent has submitted that strict timelines are provided for adjudication of disputes of commercial nature and that petitioners have not explained any justified reason for not filing the WS within the stipulated period of 30 days. It has been further submitted that condonation of delay is not a matter of course or right available to the petitioners to delay the filing of WS without any justified reason.

13. The Commercial Courts Act, 2015 mandates filing of WS within 30 days from the date of service of summons. Ordinarily, in case of commercial disputes, the WS has to be filed within a period of 30 days. However, a further period of 90 days is granted which the Court can employ for reasons to be recorded in writing and payment of such cost as it deems fit to allow such WS to come on record. After 120 days from the service of summons, the defendants forfeits the right to file the WS, and the Court can in no case allow the WS to be taken on record.

14. The impugned order reveals that process fee was filed by the respondent on 27.07.2023 and as per the report of Ahlmad, the summons were issued on 28.07.2023. Mode by which summons were dispatched is not available on record so much so the original postal

receipts are also not on record. However, the register maintained by the Ahlmad shows that summons were handed over to the Nazarat branch on 31.07.2023 and the Registered Cover [‘**RC**’] was dispatched on 17.08.2023.

15. Even though the petitioners claim that summons were served on 24/25.08.2023, the learned Trial Court assumed that petitioners must have been served within 2-3 days from the date the RC was dispatched i.e. 17.08.2023 and assumed the date of service to be 20.08.2023. Admittedly, the WS was not filed within 30 days from the said date of service of summons, but the same was filed before the expiry of extended period of 90 days.

16. Dealing with the question of condonation of delay as provided in the Limitation Act, 1963, this Court in the case of **Ather Ali and Anr vs. Mohd Shafi, (Deceased) Through AR Mohd. Akbar** [2024 SCC Online Del 7495], laid down the principles as extracted below:-

> “6. The undisputed propositions of law, as culled out of various judicial precedents are as follows. The condonation of delay cannot be a matter of course and the same is a matter of discretion of the court to be exercised in a judicious manner. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third party rights had become embedded during the interregnum, courts should lean in favour of condonation. Not the length of delay but the credibility of the explanation offered is the relevant factor where the delay is not inordinate. The expression "sufficient cause" used in Section 5 of the Limitation Act must receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafides is imputable to a party. The sufficiency or otherwise of the cause set up by the applicant in such cases has to be tested by examining as to whether the applicant was prevented from filing the appeal within time by factors beyond his control.

6.1 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."

6.2 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 :*

> *"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."*

6.3 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 in so far as an unlimited and perpetual threat of limitation creates insecurity and uncertainty which are essential for public order.

6.4 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.*
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> *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...."*

6.5 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. In the case of Union of India vs C.L. Jain Woolen Mills Pvt. Ltd., 131 (2006) DLT 360, one of the arguments of the applicant Union of India seeking condonation of delay in filing the appeal was that the power to condone delay has been conferred to do substantial justice and the court should adopt a liberal approach and the delay resulting from official procedures should normally be condoned. This Court rejected the argument, placing reliance on the judgment in the case of P.K. Ramachandran and observed that although the provisions under Section 5 Limitation Act have to receive liberal construction, but the court cannot ignore the fact that where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner without disclosure of good and a sufficient cause for condonation of delay."

17. The Hon'ble Supreme Court in case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors** [(2013) 12 SCC 649]**,** after referring to the earlier decisions laid down the following principles as extracted below:-

""21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for

condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.
21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
21.7 (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

> 22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -
> 22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
> 22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
> 22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
> 22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

18. In view of the principles laid down by the Hon'ble Supreme Court in the case of *Esha Bhattacharjee* (Supra), the application for condonation of delay is not to be dealt in a routine manner. Yet there should be a liberal, pragmatic, justice oriented and non-pedantic approach while dealing with such an application and the Court has to be mindful of distinction between inordinate delay and delay of short duration.

19. In the case of **Collector, Land Acquisition, Anantnag and Anr vs Mst. Katiji and Ors** [(1987) 2 SCC 107]**,** the Hon'ble Supreme Court laid down the approach that needs to be followed by the hierarchy of the courts. The relevant principles laid down by the Hon'ble Supreme Court are extracted below:-

> "3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression

"sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including

> the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

20. Coming back to the present case, the Court finds that even though the WS has not been filed within the stipulated 30 days period, the same was filed within the extended window of 90 days. Petitioners may not have explained each day's delay, but have referred to various factors which caused delay in filing the WS *viz* petitioners being the residents of Mumbai had to arrange the advocate in Delhi for filing the WS, unavailability of the AR to sign the statement of truth and other documents for certain days.

21. The application for condonation of delay should have been construed liberally so as to ensure that *lis* between the parties is decided on merits rather than technicalities. The learned Trial Court

should have adopted a pragmatic and justice oriented approach while dealing with such application.

22. For the delay caused on account of the written statement not having been in filed in 30 days time, petitioners could have been subjected to cost.

23. Thus viewed, the impugned order dated 21.05.2024 is set aside subject to petitioners paying to the respondent cost of Rs. 30,000/- within two weeks from today. Upon payment of cost, the WS already filed by the petitioners be taken on record.

24. The petition is accordingly disposed of alongwith pending application in terms of aforesaid order.

RAVINDER DUDEJA, J.

JANUARY 21, 2025
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