



\$~8

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision:27.09.2024

+ RFA 303/2020 & CM APPL. 33795/2020 (stay)

AKASH PACK TECH (P) LIMITEDAppellant

Through: Ms. Shubhangda Singh, Advocate

versus

M/S TODAY TEA LIMITEDRespondent

Through: Ms. Priyanka Rai, Advocate

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

ORDER (ORAL)

CM APPL. 33798/2020 (*Application filed on behalf of appellant for delay in filing of appeal*)

1. By way of this Regular First Appeal, the appellant has assailed judgment and decree dated 03.10.2018 passed by the court of learned Additional District & Session Judge-03, East District, Karkardooma Courts, Delhi in the money recovery suit filed by the present respondent. The appeal having been filed quite belatedly, the application under consideration was filed alongwith the memo of appeal, seeking condonation of delay in filing the same. The respondent opted not to file formal reply but strongly opposed the application on the basis of record. I have heard learned counsel for both sides.



2. The judgment and decree impugned in the present case having been passed on 03.10.2018, limitation period to file the appeal before this Court expired on 02.01.2019, but the appeal was filed on 24.12.2019.

3. This delay of almost one year in filing the appeal is explained by learned counsel for appellant on the ground that it is due to “administrative exigency” in the appellant company that filing of the appeal got delayed. It is submitted by learned counsel for appellant that the official of the appellant company who was looking after this litigation left job, therefore, the appellant could not keep a track of the proceedings. Learned counsel for appellant submits that while dealing with an application for condonation of delay, the court must keep in mind substantial justice and in the present case, the learned trial court had ignored the legal position related to sale of goods, so grave injustice would be caused to the appellant if the appeal is not heard on merits. In support of her submissions, learned counsel for appellant places reliance on the judgments in the cases titled *Collector Land Acquisition, Anantnag & Anr vs Mst. Katiji & Ors*, (1987) 2 SCR 387; and *N. Balakrishnan vs M. Krishnamurthy*, (1998) Supp. 1 SCR.

4. On the other hand, learned counsel for respondent contends that no sufficient cause has been set up in the application under consideration, therefore, the application is liable to be dismissed. It is further submitted by learned counsel for respondent that the appellant is not an individual but a corporate entity and this would be a relevant factor while weighing the strength of the plea raised.



5. It would be apposite to briefly traverse through the legal position relevant for present purposes.

5.1 The undisputed propositions of law, culled out of various judicial precedents, including those cited by learned counsel for appellant 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.

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.***

(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. Ramchandran 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.”*

(emphasis supplied)

5.4 In the case of ***Pundlik 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.

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”.

5.6 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)

5.7 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.

5.8 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.

6. Falling back to the present case, the submissions advanced today on behalf of appellant are completely inconsonant with record. To repeat, learned counsel for appellant explained the delay in filing the appeal on the ground that the official of the appellant dealing with the present litigation left job, so the appellant company lost track of the proceedings. In contrast, the explanation for delay pleaded in the application is extracted below:

“2. That the Appellant was not aware about the case as the said matter was decided ex-parte thereagainst whereafter the Respondent filed execution petition before the Ld. Faridabad Court subsequent upon which the Appellant herein received Summons/ Court Notice for entering appearance before the Executing Court and it is only upon receipt of such notice in the month of October, 2019, the Appellant became aware of the Impugned Order dated 03.10.2018.

3. Since, the Impugned order came to the knowledge of Appellant only in the month of October, 2019 upon receipt of the summons from Executing Court, therefore, the filing of the present Appeal (as filed on 24.12.2019) before the Hon’ble Court is well within the timeline of 90 days as provided under the provisions of the Limitation Act, 1963”.

7. In the entire application, there is not even a whisper of the alleged “administrative exigency” caused by the concerned official of the appellant leaving his job and the consequent losing of the litigation track by the appellant. As mentioned above, the case pleaded by the appellant in the application is that the appellant was not aware about the suit and came to know about the ex-parte decree only after receiving notice of the execution proceedings in the month of October 2019 and thereafter the appeal was filed within 90 days on 24.12.2019.



8. But perusal of record reflects that even the case pleaded by the appellant in the application under consideration is not truthful. It is not truthful on the part of the appellant to plead that it was not aware about the suit till it received the notice of the execution proceedings. As reflected from the impugned judgment, the appellant initially participated in the suit and even filed an application under Order VII Rule 11 CPC as well as written statement; after filing of replication, issues were framed and about 3-4 dates thereafter, the appellant stopped appearing and was proceeded against ex-parte on 14.09.2017.

9. Ofcourse, the expression “sufficient cause” in terms of the Section 5 of the Limitation Act must be construed liberally. But in the name of liberal construction of this expression, the law related to limitation cannot be rendered otiose, especially in a situation similar to the present case where the explanation for delay advanced during arguments is different from the one pleaded in the application, and even the one pleaded in the application is contrary to record.

10. As rightly submitted by learned counsel for respondent, it cannot be ignored that the appellant is not a lay person but a corporate entity, so is expected to be better diligent. In any case, it is not a mere lack of diligence on the part of the appellant in not filing the appeal in time; it is a case of falsehood pleaded in application and addressed in court. There is not even a whiff of statement to show that the appellant was prevented from filing the appeal in time by any factor beyond its control.



11. The condonation of delay being a matter of discretion of the court, it must be exercised judiciously and it cannot be extended to a litigant who approaches the court not truthfully. As mentioned above, the appellant concealed in the application that it already had participated in the suit proceedings by filing an application under Order VII Rule 11 CPC as well as written statement. The appellant conveyed an impression in the application under consideration as if summons of the suit were never served on it, so it remained in dark about the suit and came to know about the same only on receiving notice of execution proceedings. Even after receiving the notice of execution proceedings in the month of October 2019, the appellant opted not to be diligent and claimed three months as a matter of right to file the appeal.

12. As mentioned above, the delay in filing the appeal in the present case is inordinate one of almost a year. Ofcourse, length of delay may not be the decisive factor, in the sense that if satisfactorily explained, the delay of much longer period also can be condoned but if the explanation is not satisfactory, delay of even a few days cannot be condoned. Present is a case of absolutely no explanation, what to say of satisfactory explanation of delay in filing the appeal.

13. Considering the above circumstances, I do not find it a fit case to exercise discretion in favour of the appellant. As such the application for condonation of delay in filing the appeal is dismissed.



RFA 303/2020 & CM APPL. 33795/2020 (stay)

14. Consequently, the appeal is dismissed as time barred and the pending applications stand disposed of.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 27, 2024/as

Click here to check corrigendum, if any