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

*%* *Date of Decision: 14.02.2025*

\+ **RFA 140/2025**

JAN CHETNA JAGRITI AVOM SHAIKSHANIK VIKAS MANCH & ORS. .....Appellants

Through: Mr. Mir Adnan Zahoor and Mr. Akhil Bharat Kukreja, Advocates.

versus

SH ANAND RAJ JHAWAR SOLE PROPRIETOR OF M/S RR AGROTECH .....Respondent

Through: None.

**CORAM: JUSTICE GIRISH KATHPALIA**

**J U D G M E N T (ORAL)**

**CM APPL. 8976/2025 (for condonation of delay of 562 days in filing the appeal)**

1. The appellants, a registered Non-Government Organization (NGO) and its President and Secretary have filed the present application, seeking condonation of delay of more than one year in filing the accompanying appeal under Section 96 CPC to assail the judgment and decree of recovery of money. According to the appellants, the delay concerned is of 562 days while as per Registry of this court, the delay is of 565 days. I have heard learned counsel for appellants and examine the records.

2. The delay in filing the accompanying appeal is explained in the application solely on the ground of professional misconduct of the erstwhile counsel, as extracted below:

> *"3. That the said delay was neither wilful nor deliberate but was solely caused due to grave professional misconduct and lack of diligence on the part of the previous counsel engaged by the Appellants, who failed to inform the Appellants regarding the passing of the impugned judgment and decree. Due to this deliberate concealment of material facts, the Appellants were completely unaware of the passing of the decree and could not exercise their statutory right to file an appeal within the stipulated time frame.*
> *4. That the Appellants, being laypersons and trusting their previous legal counsel to diligently represent them remained under the bona fide belief that appropriate legal action was being taken to safeguard their rights. However, it was only recently that the Appellants, upon making inquiries, became aware of the fact that the impugned judgment had already been passed and their statutory right to appeal was extinguished due to the inaction of their previous legal counsel."*

3. Learned counsel for appellants contends that for the professional misconduct of their erstwhile counsel, the appellants cannot be made to suffer. It is submitted by learned counsel for appellants that the appellants are not conversant with the "nitty-gritty" of procedures of law, so they cannot be penalised for this delay in filing the appeal. In support of their arguments, learned counsel for appellants place reliance on the judgments of Hon'ble Supreme Court in the case of ***Perumon Bhagwathy Devaswom Perinadu Village vs. Bhargavi Amma (dead) by legal representatives & Ors.,*** (2008) 8 SCC 321 and of the High Court of Gujarat in the case of ***Nimesh Dilipbhai Brahambhatt vs. Hitesh Jyantilal Patel***, Civil Application No.6547/2020 decided on 02.05.2022. Besides, learned counsel for appellants also contend that no hearing was granted to the appellants by the Trial Court before passing the impugned judgment and decree and in this

regard learned counsel refers to the ordersheet dated 13.04.2023 of the learned Trial Court, pointing out that the counsel who appeared before the Trial Court was only a proxy counsel, who sought adjournment on the ground of demise in the family of the main counsel. Besides, learned counsel for appellants also contend that the impugned judgment and decree was passed by *quorum non judice*. No other argument on this application has been advanced.

4. To begin with, as regards contention that the appellants were deprived of a hearing by the trial court, the submission in this regard is completely contrary to order dated 13.04.2023. As reflected from record, the suit culminating into the impugned judgment and decree was pending since the year 2016. The appellants have not placed on record the ordersheets of the Trial Court prior to 13.04.2023 to show the number of adjournments granted to them. Further, it appears even from order dated 13.04.2023 that after allowing the adjournment request of the appellants, the learned Trial Court heard the counsel for the present respondent and granted liberty to counsel for the appellants to address arguments on any working day at 03:00 pm and posted the matter for final orders on 27.04.2023. It is not a case where after hearing one side, the Trial Court would close arguments and post the matter for orders. Where one of the litigants keeps avoiding court and tries to protract the proceedings, the Trial Court has no option but to grant liberty to such defaulting litigant to either file written arguments or to address arguments on any other day subject to costs. Another such option available to deal with such litigants is what the learned Trial Court did in the present

case, which is by directing the defaulting litigant to address arguments on any day before the date fixed for orders. As reflected from the impugned judgment the appellants opted not to avail this opportunity and did not at all appear to address arguments. As extracted portion of the application under consideration shows, the appellants themselves plead that it is their counsel who committed misconduct. So, it cannot be treated as a case of the appellants having been deprived a fair hearing by the court.

5. As mentioned above, the only explanation advanced by the appellants with regard to the colossal delay of 565 days in filing the appeal is that their erstwhile counsel kept them in dark. This explanation needs to be tested on the anvil of the judicially sanctified parameters under Section 5 of the Limitation Act.

5.1 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.

5.2 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.

5.3 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)*

5.4 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."*
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> *(emphasis supplied)*

5.5 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.

5.6 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**...."*

*(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 ***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".*

5.9 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)*

5.10 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)*

5.11 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, in response to a specific query, learned counsel for appellants admitted that no action has been initiated by the appellants against their erstwhile counsel for his alleged misconduct. That being so, in the light of above discussed judicial pronouncements, I find it difficult to believe that there was any misconduct on the part of the erstwhile counsel for the appellants, as alleged by them. Besides, in the absence of any action by way of any complaint before the concerned Bar Council, believing such allegation of the appellants *qua* professional

misconduct of their erstwhile counsel would also be tantamount to condemning the erstwhile counsel unheard, that too on judicial record.

7. As discussed in the judicial precedents cited above, there is no blanket rule that for misconduct of the counsel, the litigant be not made to suffer. The court has to keep in mind the socio economic and educational status of the litigant. An educated urban litigant cannot claim same protection of this rule as extended to an uneducated rustic litigant in the sense that where the latter completely banks upon his counsel and fails to keep a track of his litigation, it is understandable, but it is not understandable where the former does so. In case of an educated litigant, his duty does not end merely by signing the fee cheque of the counsel. An educated litigant is expected to keep a track of his litigation. In the present case, the appellants are not illiterate or semi literate rustic individuals. The appellants are a registered NGO and its senior functionaries, so cannot be expected to not keep a track of the *lis*.

8. It is certainly not a case where the appellants were precluded from filing the appeal in time by circumstances beyond their control. The appellants ought to have kept a track of the money recovery suit pending against them, but they opted not to do so and did not ensure that their counsel should address final arguments before the Trial Court. Even after culmination of the suit into the impugned judgment and decree, the appellants remained sleeping over it. Now, they cannot seek condonation of such colossal delay under the pretext of professional misconduct of their

erstwhile counsel. It is not only the colossal length of delay; it is the unacceptable explanation of the delay, which must be discarded.

9. The court also cannot ignore that with expiry of period of limitation to file the appeal, and a further time of almost year and a half, a reasonable expectation arose in favour of the present respondent to treat the impugned decree final and binding. It would be a travesty of justice if now the delay in filing the appeal is condoned, pushing the successful litigant through another round of proceedings in appeal.

10. In view of above discussion, the application under consideration is dismissed.

**RFA 140/2025, CM APPL. 8978/2025 & CM APPL. 8977/2025**

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

GIRISH KATHPALIA

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**GIRISH KATHPALIA**
**(JUDGE)**

**FEBRUARY 14, 2025/***ry*