

**Chief Justice's Court**

**Case :-** COMMERCIAL APPEAL DEFECTIVE No. - 1 of 2025

**Appellant :-** M/s Jay Chemical Works

**Respondent :-** M/s Sai Chemicals

**Counsel for Appellant :-** Govind Singh (Sr. Advocate), Imran Syed, Anil Sahu

**Counsel for Respondent :-** Devansh Misra, Anup Shukla

**Hon'ble Arun Bhansali, Chief Justice**

**Hon'ble Kshitij Shailendra, J.**

**In Re:- Delay Condonation Application No. 1 of 2025**

1. Heard Shri Govind Singh, learned Senior Counsel assisted by Shri Imran Syed and Shri Anil Sahu, Advocates for the applicant/appellant and Shri Devansh Misra and Shri Anup Shukla, Advocate for the sole respondent.

2. The present appeal under Section 13(1-A) of Commercial Courts Act, 2015 (for short 'the Act, 2015') is reported to be beyond time by 154 days. Affidavits have been exchanged in the matter of condonation of delay.

3. The appeal, filed in April, 2025, is directed against the order dated 19.09.2024 whereby the Commercial Court, Kanpur Nagar has directed return of plaint of Commercial Suit No. 3 of 2020 (M/s Jay Chemical Works Vs. M/s Sai Chemicals) to the plaintiff-appellant-applicant by invoking powers under Order VII Rule 10 CPC.

**APPLICATION SEEKING CONDONATION OF DELAY**

4. In the affidavit supporting application, it is stated that Mr. Jay Kumar, the proprietor of the appellant, had fallen seriously ill and

remained under treatment of a doctor at Pratha Hospital, Kanpur on account of feeling uneasiness, stomach disorder besides other ailments; that the business of the appellant got affected due to such ailments; that the proprietor could not keep track of the case; that the local counsel also did not inform him about passing of the impugned order dated 19.09.2024; that upon some recovery in health in the month of February-March, 2025, the proprietor changed his counsel in all the three matters of the appellant pending before the Kanpur Court and, upon inquiry, it came to the knowledge of newly engaged counsel that two matters were pending adjudication before the Court, however, the third matter, i.e. the present case under appeal, had already been decided by the Commercial Court by the order impugned dated 19.09.2024. It is further stated that on legal advice received from the newly engaged counsel, challenge has been made to the order impugned by filing the instant appeal.

#### COUNTER AFFIDAVIT

5. The respondent has filed counter affidavit stating that in another proceedings, bearing O.S. No. 31 of 2023 pending before the same Commercial Court, Kanpur, the proprietor had put in regular appearance post pronouncement of the judgment in O.S. No. 3 of 2020 giving rise to the present appeal; that an affidavit dated 10.01.2025 was also filed by him in O.S. No. 31 of 2023; that

misleading statements have been made regarding physical ailments or change of counsel, inasmuch the new counsel, namely, Mr. Anil Kumar Sahu, was engaged by the appellant in the month of January, 2025 itself. Further stand is that even if new counsel was engaged, since his engagement took place prior to 10.01.2025, the period of limitation of 60 days would lapse on 10.03.2025 and, consequently, the explanation offered for condonation of delay is not acceptable.

#### REJOINDER AFFIDAVIT

6. In the rejoinder affidavit, the stand taken is that the proprietor Shri Jay Kumar was not personally appearing in the matters, rather it was the counsel who was appearing therein and the affidavit filed by the proprietor in another case would not infer that he was healthy or was in a position to travel from Kanpur to Prayagraj for the purposes of filing the instant appeal. It is further stated that the proprietor is under treatment of a renowned and reputed doctor and the supporting material annexed to the affidavit substantiates the plea of physical ailments. As regards change of counsel, it is stated that after disengagement of previous counsel, another counsel Mr. Anil Kumar Sahu was engaged, whereafter it stood revealed that other matters were also pending/decided by the Commercial Court.

#### SUBMISSIONS ON BEHALF OF THE APPLICANT

7. Learned Senior Counsel appearing for the applicant/appellant submits that whatever delay has occurred in filing the appeal, the

same is on account of physical ailments of the proprietor of the appellant and the facts having come into light after inquiry conducted by the newly engaged counsel and since the plea of physical ailments is supported by medical evidence annexed to the affidavit, delay may be condoned in the interest of justice. It is further argued that, admittedly, three commercial suits were pending before Commercial Court, Kanpur, and the Commercial Court, by an identical order dated 29.03.2025, has directed return of plaint of Commercial Suit No. 31 of 2023 to the applicant recording same reasons as have been recorded in the order impugned in the present appeal and a Commercial Appeal No. 18 of 2025 filed against the order dated 29.03.2025 passed in Suit No. 31 of 2023 has already been connected alongwith the present defective appeal by order dated 20.05.2025 passed in that Appeal. It is thus contended that both the matters should be heard on merits, particularly when the other connected appeal has been filed within the prescribed period of limitation. In support of his submissions, Shri Singh has placed reliance upon judgment of Hon'ble Supreme Court in the case of **Ummer Vs. Pottengal Subida and others : (2018) 15 SCC 127.**

#### SUBMISSIONS ON BEHALF OF THE RESPONDENT

8. Per contra, learned counsel for the respondent submits that since false plea of physical ailments being an alleged impediment

in timely approaching the Court has been taken as an explanation for condoning delay, the application is liable to be rejected. Submission is that once the proprietor filed his affidavit dated 10.01.2025 before the same court, the very plea raised by the appellant that he had no knowledge about the order impugned and thus was unable to file appeal within time, does not hold any water. It is also urged that false and vague plea regarding change of counsel has been taken in the affidavits and once it is established that subsequent counsel was engaged in January, 2025 itself, filing the appeal in April, 2025 indicates that grounds have been cooked up for seeking condonation of delay. In support of his submissions, reliance has been placed on the judgment of Hon'ble Supreme Court in **Jharkhand Urja Nigam Ltd. and another Vs. Bharat Heavy Electricals Limited: Petition for Special Leave to Appeal (C) No. 9580 of 2025**, decided on 15.04.2025.

#### DISCUSSION AND FINDINGS

9. We have considered the submissions made by both sides and have perused the affidavits filed in the matter of condonation of delay. First of all, we deem it appropriate to consider the principle of law laid down in the judgments cited by both sides.

10. In **Ummer (supra)**, the Hon'ble Supreme Court has observed that the earlier view that a litigant is required to explain delay of each day till date of filing the appeal has since been diluted by the

later decisions of the Apex Court, the same remains no longer a good law and 'sufficient cause' within the meaning of Section 5 of the Limitation Act should be liberally considered. In the said case, the ground seeking condonation of delay was physical ailments of the concerned appellant. In the instant case, condonation of delay has been sought not only on the ground of physical ailments of the proprietor, but also subsequent acquisition of knowledge of the order impugned pursuant to inquiry conducted by a newly engaged counsel.

11. The matter in **Jharkhand Urja Nigam Ltd. (supra)**, had arisen from a situation where the appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act, 1996') had been filed after a delay of 301 days and the Hon'ble Supreme Court, after placing reliance upon its earlier decision in **Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Pvt. Ltd. : (2021) 6 SCC 460**, refused to condone delay in filing appeal by the Government, for the reasons indicated in the judgment.

12. The Hon'ble Supreme Court, in the case of **Borse Brothers (supra)**, while discussing its previous decision in the case of **Brahampal Vs. National Insurance Company: (2021) 6 SCC 512**, pointed out difference between delay in filing appeals under the Act, 1996 and those under the Act, 2015. It was held that in

appeals filed under both the Acts, the facts and circumstances of each case must afford sufficient ground to enable the court to exercise its discretion judiciously and the applicant must satisfy the court that he was prevented by any 'sufficient cause' from prosecuting his case and the court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. While placing reliance upon judgment in the case of **Madanlal Vs. Shyamlal : (2002) 1 SCC 535**, it was also held that the expression 'sufficient cause' should be given a liberal interpretation to ensure that substantial justice is done, and whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.

13. In the present case, admittedly, in between the same parties, identical matters were contested and complaints of two suits, i.e. Suit Nos. 3 of 2020 and 31 of 2023, have been returned to the applicant. Whereas, the present appeal arising out of order dated 19.09.2024 passed in Suit No. 3 of 2020 is beyond time, the connected appeal arising out of identical order dated 29.03.2025 passed in Suit No. 31 of 2023 has been filed within time and, therefore, it does not appear to be justified that, in one matter, validity of the order returning the complaint is examined on merits and, in another matter, challenge laid to exactly an identical order on identical grounds is discarded only on account of delay having occurred in filing the appeal.

14. Further, the medical prescriptions and reports appended to the application seeking condonation of delay cannot be ignored nor can it be said, for want of specific denial with supporting material, that the plea as regards sufferance of the proprietor of the appellant from physical ailments is utterly false. As far as knowledge of the order impugned dated 19.09.2024 is concerned, the stand taken to the effect that when Shri Anil Kumar Sahu was subsequently engaged as counsel, he made inquiries and found that two out of three matters were pending, whereas the third one, i.e. Commercial Suit No. 3 of 2020, had been decided in terms of the order impugned, appears to be cogent and worth believing.

15. Further, mere filing of affidavit dated 10.01.2025 in another suit, i.e. Commercial Suit No. 31 of 2023, though before the same Court, is, in itself, not sufficient to form a conclusive opinion regarding previous knowledge of passing of order in different suit. The plea of physical ailments of the proprietor duly supported by medical evidence, factum of passing of the order impugned coming into light by way of inquiry conducted by a subsequently engaged counsel, coupled with a very significant aspect that identical order returning the plaint has been challenged in the connected appeal which is well within time, the cause shown for delay in filing the present appeal is found to be sufficient and satisfactory in the facts of the present case.

CONCLUSION

16. In view of above discussion, we find that the applicant has successfully made out a case for condonation of delay in filing this appeal. Consequently, the application under Section 5 of the Limitation Act is **allowed**. The delay in filing the appeal is hereby condoned.

17. Office is directed to allot regular number to the appeal.

18. List the appeal **on 13.08.2025** along with connected Commercial Appeal No. 18 of 2025, **as fresh**.

**Order Date :- 5.8.2025**

AKShukla/-

(Kshitij Shailendra, J) (Arun Bhansali, CJ)