



IN THE COURT OF SH. DEVENDRA KUMAR SHARMA
DISTRICT JUDGE (COMMERCIAL COURT)-03: CENTRAL :
TIS HAZARI COURTS (EXTENSION BLOCK) : DELHI.

CS (COMM) No. 218/2026

IN THE MATTER OF:-

Swastik Audiolines Pvt. Ltd. ...Non-Applicant/Plaintiff

Versus

Shree Sai Enterprises

...Applicant/Defendant

ORDER
28.07.2026

1. Vide this order, I shall dispose of the application filed on behalf of the defendant under Section 5 of the Limitation Act seeking condonation of delay in entering appearance.

2. In the application, it is stated that Mrs. Baby Sharma is the proprietor/owner of the defendant firm and is responsible for managing the affairs and litigation pertaining to the defendant concern. It has been further averred that during the relevant period, the husband of the applicant developed serious throat-related medical complications and the applicant remained fully occupied in attending to her husband and arranging his treatment,

due to which she could not timely contact and instruct her counsel for entering appearance before the Court within the prescribed period. It has been further averred that the delay in entering appearance is neither intentional, deliberate nor malafide but has occurred due to bona fide and unavoidable circumstances beyond her control. It has been further submitted that the applicant has every intention to contest the present matter on merits and the delay has not been caused with any intention to delay the proceedings. It has been further submitted that no prejudice would be caused to the plaintiff if the delay is condoned whereas grave prejudice and irreparable loss would be caused to the defendant in case the present application is not allowed. Thus, it is prayed that delay, if any, in entering appearance may be condoned and appearance of the defendant may be taken on record.

In support of the submissions, reliance has also been placed on behalf of the defendant upon the judgment passed by Hon'ble High Court of Delhi in case titled as ***Babu Lal Yadav vs. M/s R.S. Yadav & Co. & Anr., C.R.P. 130/2009 (DOD: 22.02.2010)***.

3. In the reply, the application is opposed on behalf of the plaintiff on the ground that the same is misconceived, frivolous and devoid of merits. It has been further averred that application does not explain each day's delay as required under law and therefore deserves outright rejection. It has been further averred that the alleged medical condition of the husband of the proprietor neither prevented the defendant from entering appearance within the prescribed period nor constitutes sufficient

cause under the law and the defendant has failed to establish any nexus between the alleged illness and the delay caused. It has been further averred that the medical documents filed by the defendant are of February, 2026 but the summons were served upon the defendant through courier on 30.04.2026 and through speed post on 02.05.2026. Hence, the medical documents relied upon by the defendant do not cover the relevant period of May, 2026. It has been further averred that the defendant is a commercial entity carrying on business activities and could have engaged counsel or authorized any representative to appear before the Court. It has been further averred that the defendant has been grossly negligent in pursuing the matter and is attempting to take advantage of its own wrongs and defendant is also not appearing in complaint case U/s 138 of NI Act wherein bailable warrants have been issued against the defendant on 23.05.2026. Thus, it is prayed that the application may be dismissed with heavy costs.

In support of the submissions, reliance has also been placed on behalf of the plaintiff upon the following judgments:-

- (i) *Tropical Industries International Pvt. Ltd. & Anr., CS (COMM) 300/2025 passed by Hon'ble High Court of Delhi on 06.02.2026.*
- (ii) *Loveneet Singh & Ors. vs. Neeraj Sarna, RFA 197/2021 passed by Hon'ble High Court of Delhi on 30.04.2024.*

4. Arguments were addressed by Sh. Bhavya Jain, Counsel for the applicant/defendant as well as Ms. Neha Gund and Sh. Amit Rana, Counsels for the non-applicant/plaintiff.

5. I have given my thoughtful consideration to the submissions advanced on behalf of the parties. I have also perused the record carefully.

6. **Order XXXVII Rule 3, sub-rule (1) of the Code of Civil Procedure, 1908** is reproduced and reads as under:-

“3. Procedure for the appearance of defendant. -

(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) to (7) xx xx xx”

7. **Order XXXVII Rule 2, sub-rule (3) of the Code of Civil Procedure, 1908** is reproduced and reads as under:-

“2. Institution of summary suits. -

(1) xx xx xx

(2) xx xx xx

(3) The defendant shall not defend the suit referred to in sub-rule(1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.”

8. As per record, the defendant was served through speed post on 02.05.2026 and through courier on 30.04.2026. In the entire application, there is no mention of date of service nor any detail has been given of delay in entering appearance. The present application for delay condonation is stated to be e-filed on 08.06.2026 on the ground of illness of husband of the applicant/defendant and the copy of medical documents attached with the application are of the month of February, 2026 specifically admission on 24.02.2026 and discharge on 27.02.2026 at Mahatama Gandhi Medical College and Hospital alongwith a copy of vakalatnama. As per e-filing record, one memo of appearance on behalf of defendant was filed on 22.05.2026. Thus, in any case, the appearance on behalf of the defendant at the earliest can be treated to be on 22.05.2026 and therefore, there is delay of about 12 days in filing the appearance.

9. In the present case, the medical ground shown in delay in filing is not contemporary to the period of service but the medical documents suggest that there was treatment of vocal cords which was operative. The law regarding the interpretation of sufficient cause as contemplated under Section 5 of the Limitation Act has been liberal in respect to civil suits filed before the regular civil courts but after the introduction of Commercial Courts Act, the time frame has become the governing point in commercial litigation.

10. In the present case, there is delay of about 12 days and that too has been taken on the ground of medical treatment of the husband of applicant/defendant, this delay cannot be said that

it was so intentional in order to delay the trial of the present matter. It is the cardinal principle of law that advancing substantial justice is the primary duty of the Court. In the present case also considering the treatment being done of the husband of the applicant, it can be said that in such a situation there may be some delay on the part of the applicant to engage the counsel. In this regard, para 14 of the case titled as Babu Lal Yadav (supra) is relevant and is being reproduced for ready reference as under:-

14. It is trite that condonation of delay is a matter of discretion of the Court. [Section 5](#) of the Limitation Act, 1963 does not prescribe that such a discretion can be exercised by the Court only if the delay is for a certain period of time, rather the length of delay is hardly relevant. What is to be considered is the explanation offered for the delay. Thus each case has to be examined in its own facts and as long as there is a satisfactory explanation offered for the delay, the Court is well within its powers to accept the explanation and condone the delay. Merely because the title of the application does not reflect the correct position of law, can also not be a ground to oust a party. What has to be examined is the explanation offered in the application and the relief sought. In other words, substantial justice cannot be permitted to be sacrificed at the altar of technicalities. In the case of [N.Balakrishnan Vs. M. Krishnamurthy](#) reported as (1998) 7 SCC 123, the Supreme Court relying on its earlier decisions in the case of [Shakuntala Devi Jain Vs. Kuntal Kumari](#) reported as (1969) 1 SCR 1006 and [State of West Bengal Vs. Administrator, Howrah Municipality](#) reported as (1972) 1 SCC 366, held that the words "sufficient cause" as mentioned in [Section 5](#) of the Limitation Act, 1963 ought to receive a liberal construction so as to advance substantial justice for 'court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause'. It was further observed that "it must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of dilatory strategy, the Court must show utmost consideration to the suitor". It was also observed as under:

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. **Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.** But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential

anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time." (emphasis added)

11. Thus, considering the totality of the facts of the case, the circumstances especially of medical treatment of the husband of the applicant which appears to be a satisfactory explanation and further the said delay can be compensated in terms of the costs in order to achieve the substantial justice on merits, this Court is of the opinion that sufficient cause has been made out to condone the delay in entering appearance. Accordingly, application in hand is allowed, in the interest of justice, subject to costs of Rs.25,000/- to be paid to the plaintiff. The application is disposed of accordingly.

Dictated and pronounced
in the open Court
on 28th July, 2026.

(DEVENDRA KUMAR SHARMA)
District Judge (Commercial Court)-03
Central District, THC, Delhi.