

IN THE COURT OF SH. MANOJ KUMAR-I, DISTRICT JUDGE
(COMMERCIAL COURT)-05, CENTRAL, TIS HAZARI COURTS,
DELHI

CS (COMM) No. 616/2024

In the matter of:

M/s DE Neers Tools Ltd. v. M/s Friends Machine Tools & Anr.

ORDER

This order shall decide an application made on behalf of the plaintiff seeking condonation of delay in making the application under section 114 read with section 151 of the Code of Civil Procedure, 1908 (CPC) for review of order dated 22.8.2024.

2. Relevant facts and circumstances for decision on the application are that the plaintiff has made an application under section 114 read with section 151 of CPC for review of order dated 22.8.2024 whereby on an application under Order I Rule 10 of CPC for impleading Mohd. Anwar as one of the LR of the defendant No. 1, the plea of the plaintiff was denied. Along with the said application for review of order dated 22.8.2024 the present application has been made seeking condonation of delay of 120 days in making the said application for review.

3. It is, inter alia, stated in the application for condonation of delay that the application (for review) is delayed due to the impugned order dated 22.8.2024 in which the court stated that the application

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under Order I Rule 10 of CPC was not maintainable, rather the proper course for impleading the LRs of the deceased was by moving an application under Order XXII Rule 4 of CPC; that after the observation by this court in order dated 22.8.2024, the plaintiff has filed an application under Order XXII Rule 4 of CPC; that due to legal research and going through the provisions of law and due to above mentioned reasons the plaintiff has delayed 120 days in filing the application (for review). It is further stated in the application that the application be allowed and delay of 120 days in filing the application (for review) be condoned.

4. I have heard counsel for the plaintiff on the application and have gone through the material on record carefully. I have also heard counsel for Mohd. Anwar who has appeared in this case on opposite side without being a defendant.

5. Having drawn the attention of the court on the contents of the application, order dated 22.8.2024 passed by the learned predecessor, the provisions of section 114 of CPC, the provisions of section 5 of the Limitation Act, 1963 (Act 36 of 1963) and Pankajbhai Rameshbhai Zalavadia v. Jethabhai Kalabhai Zalavadiya (Deceased) through LRs and others, AIR 2018 SC 490 it is submitted by counsel for the plaintiff that aggrieved by the order dated 22.8.2024 passed by the learned predecessor, whereby on an application under Order I Rule 10 of CPC made on behalf of the plaintiff for impleadment of Mohd. Anwar as one

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of the LR of the defendant No. 1 the relief was denied, the plaintiff has made an application for review of the said order. It is further submitted by counsel for the plaintiff that in making the said application for review there is delay of 120 days which was caused as counsel for the plaintiff was engaged in legal research work in the matter. It is further submitted by counsel for the plaintiff that due to the said sufficient cause the application for review of the impugned order could not be made within the time prescribed by law, therefore, the delay in making the application be condoned and the period of limitation be extended.

6. Per contra, it is submitted by counsel for Mohd. Anwar that the application is frivolous and the same be dismissed.

7. I have given thoughtful consideration to the submissions made on behalf of the plaintiff as well as Mohd. Anwar.

8. The present suit for recovery of Rs.56,84,985/-, after filing was received by way of assignment on 18.5.2024. The plaintiff in the case is M/s DE Neers Tools Limited and the defendants were M/s Friends Machine Tools and its proprietor Anwar Siddique. As per the contents of the plaint and the document filed along with the same, at the relevant time the proprietor of the said M/s Machine Tools was one Dost Mohd., who passed away before filing of the plaint in the suit, and, admittedly, this fact was revealed on the plaintiff during the pre-institution mediation proceedings. Having knowledge that Dost Mohd. Had died, after filing of the suit, the plaintiff made an application under

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Order 1 Rule 10 of CPC for bringing his LR Mohd. Anwar as the defendant in the case, and by the impugned order dated 22.8.2024 the said relief was denied by the learned predecessor. Subsequently, an application under section 114 of CPC was made on behalf of the plaintiff for review of the said order through e-filing on 20.1.2025, and physically on 21.1.2025. Since the application for review, as per the version of the plaintiff itself, is barred by limitation, therefore, the present application for condonation of delay has also been made.

9. As per section 3 of Act 36 of 1963 every application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Further, as per section 5 of the said Act any application, other than an application under any of the provision of Order XXI of CPC, may be admitted after the prescribed period, if the applicant satisfies the court that he had sufficient cause for not making the application within such period.

10. As per article 124 of the Schedule attached to Act 36 of 1963 an application for review of judgment may be made within thirty days from the date of the decree or order.

11. In the present case the impugned order was made on 22.8.2024, and thus, the application for review of the said order could have been made on or before 21.9.2024. The application for review, however, was made through e-filing on 20.01.2025 and physically on

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21.01.2025, almost four months after pronouncement of the impugned order.

12. In the present application for condonation of delay the ground taken is that: due to legal research and going through the provisions of law the plaintiff has delayed 120 days in making the application. In the considered opinion of the court this is not a sufficient cause, as contemplated under section 5 of Act 36 of 1963, for condoning the delay of 120 days in making the application for review. The judgment cited on behalf of the plaintiff is not applicable in deciding the present application as the same pertain to interpretation of Order I Rule 10 of CPC and not section 5 of Act 36 of 1963.

13. In view of above discussion, the application for condonation of delay is found without merit and the same is dismissed.

Pronounced in the open court
on the 23rd day of April, 2025

(MANOJ KUMAR-1)
District Judge (Commercial Court)-05
Central District: Tis Hazari: Delhi