

IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT MYSURU

Dated this, the 16th day of April 2021

Present: **Sri. RAMACHANDRA D.HUDDAR**, B.Com., LL.M,
Prl.District & Sessions Judge,
Mysuru.

COM.O.S.131/2020

Plaintiff : M/s PCP Electronic Private Limited,
No.191, Hebbal Industrial Area,
Mysuru.
By its Directors,
Smt. Manju Prasad W/o P.C.Prasad.

(By Sri. Goutham Chand, Advocate)

//Vs//

Defendants

1. Yashas Electronics
No.68/A, (next to Marc
Batteries), Hootagalli Industrial
Area, Mysuru.
By its Proprietrix
Smt.Leelavathi B.
W/o H.V.Somashekar,
Aged about 45 years,
2. Yashas Atreya S.
S/o H.V.Somashekar,
Aged about 24 years,
3. B.Vanajakshi W/o late Narayan,
Aged about 49 years,
Working at Shanthaveri
Gopalagowda Memorial Hospital,
T.Narasipura Main Road,

Mysuru-570010.

(By Sri.J.N.Parashivamurthy – Adv.)

Parties to I.A.No.I

**Applicant/
appellant:**

M/s PCP Electronic Private Limited

Vs.

**Opponents/
respondents:**

Yashas Electronics

:: ORDERS ON I.A.NO. I & V ::

These interim applications are filed by the plaintiff i.e., I.A.I is filed under Order 38 Rule 5 r/w section 151 of C.P.C. to pass an order of attachment of the machinery specified in the schedule which have been kept in the industrial shed No.68/1, Hootagalli Industrial Area, Mysuru and I.A.V is filed under Order 39 Rules 6 and 7 r/w Section 151 of C.P.C. to pass an order of seizure of machineries belonging to the plaintiff as the defendants have not appeared or furnish any security as per the order passed in this case.

2. Along with these applications one Manju Prasad being the Director of the plaintiff company has filed an affidavit stating that, plaintiff was running an industry under the name and style as PCP Electronic Private Limited at No.191, Hebbal Industrial Area, Mysuru. It is stated that, there were some reasons, the plaintiff company stopped the production and

closed the said company in the month of March 2017. Plaintiff company was supplying material to various companies and at the commencement of the business the machineries were imported from Singapore and other countries, so also some of the machineries and other equipments were purchased in India.

3. It is further stated that,the 1st defendant was earlier working with the plaintiff company, therefore both plaintiff company and defendant No.1 was known to each other. It is stated that, defendants approached the plaintiff and represented that, they would buy the machinery belongs to the plaintiff company. They also agreed to make arrangements to secure loan from the bank i.e., Karnataka Bank, HDFC Bank. It is further stated that, the defendants agreed to make arrangements to secure the loan. Defendant Nos.2 and 3 are none other than the son of defendant and sister of defendant No.1 and put forth a proposal to purchase the machineries of the plaintiff company and agreed to pay monthly EMI for the total amount fixed to purchase the machinery. It was Rs.one crore. There was an agreement to that effect. It is further stated that, defendant Nos.1 to 3 represented that, sum of Rs.one crore is payable on monthly E.M.I. of Rs.2,00,000/- for a period of five years i.e., 60 months. It is further stated that, the 1st defendant agreed that the 1st EMI will commence from July 2018 onwards. Defendant Nos.2 and 3 believing the **agreement** the and 1st defendant took all the machineries and other furnitures to their custody on

09.05.2018. The machineries specified in para No.2 of the affidavit have been taken over by the defendants. It is further stated that, these defendants kept all the machineries stated in para No.2 of the affidavit to indulge the shed No.68/A Hootagalli Industrial Area. When the plaintiff called defendants to pay the monthly installments and demanded same for the month of July 2018 at Rs.2,00,000/-, but they have not done the payment. They went on postponing the said payment. Constantly, they are demanded to pay the E.M.I. Plaintiff waited for a considerable period. Even there was no proper payment. Therefore, the plaintiff returned the machineries. As the defendants did not, therefore the plaintiff got issued a notice on 20.03.2020 and called upon defendant Nos.1 and 2 to pay the amount or return the machineries. But the 1st defendant after taking over the machineries and furnitures have not paid the amount. Therefore, the plaintiff is constrained to file the present suit and has filed the application seeking attachment before judgment. If the application is not allowed, the plaintiff's family would be put to greater hardship and loss.

4. To this application the defendants opposed by filing their detailed objection statement, denying entire assertion made in the affidavit. It is contended that, there is no proper procedure being followed by the plaintiff in filing this suit. This suit has to be sent for mediation as it is a Commercial Suit. It is further stated that, no such procedure has been followed by the plaintiff. It is further contended that, the

machineries so purchased are more than 10 years old and they were not at all useful for the defendants. It is further contended that, there was a promise to give the old machineries in lieu of the amount being due to the 1st defendant by the plaintiff company. Therefore, instead of paying P.F. amount the machineries have been given to the defendant No.1. Defendant No.1 is a vendor of certain articles to the L & T Company. It is further contended that, the 1st defendant had submitted an application to the Karnataka Bank for grant of Rs.25,00,000/- under the Prime Minister Employment Scheme. There was no proper advance of the amount by the said Bank, as there was a refusal to pay the GST. It is contended that, one P.C.Prasad is the owner and Director of the PCP Electronics. It is further contended that, 1st defendant was working in PCP Electronic Company. It is admitted. But other allegations so made in the affidavit are not true. It is further stated that, the owner P.C.Prasad has given a quotation for Rs.25,00,000/- and has not given a quotation for Rs.one crore as alleged. It is further stated that, there was no agreement to pay the amount of Rs.one crore and payment of E.M.I. as alleged in the affidavit to the extent of Rs.2,00,000/- per month for a period of 5 years i.e., 60 months etc. According to the defendants, towards payment of total PF amount of Rs. 34,17,480/- these defendants have got the said machineries. The plaintiff has no locus-standi to file the present suit. By denying all the assertions made in the plaint, it is prayed by the defendants to dismiss the application.

5. So far as I.A.V is concerned, the contents of this affidavit are in replica of the contents of the affidavit filed along with I.A.I. It is stated that, as the defendants are not returning the said machineries or not paying the amount, therefore those machineries have to be seized. Defendants are trying to enter into the contract with third party to dispose of the machineries. Therefore, it is prayed by the plaintiff to allow both the applications.
6. So far as objections in I.A.V is concerned, similar objections have been filed with that of the objections so filed to I.A.I. It is contended that, there is no truth in the allegations made in the affidavits annexed to both the applications. It is further contended that, there is no question of any confiscation of the machineries being possessed by the said defendants. Defendants are not expected to pay Rs.35,00,000/- in the manner claimed by the plaintiff company. It is denied that, total arrears of Rs.45,00,000/- is deemed to be paid to the plaintiff etc. Hence, it is prayed to dismiss I.A.V.
7. Heard the arguments of both sides and meticulously perused the records.
8. The points that would arise for my consideration are as under:

1.Whether the appellants have made out grounds to condone the delay of 70 days as prayed?

2. What Order?

9. My answer to the above points are as under:

Point No.1:	In the affirmative
Point No.2:	As per final order, for the following:

: REASONS :

10. **POINT NO.1** : This appeal has been preferred by the appellants being aggrieved by the judgment and decree so passed in O.S.No.507/2018 by the IV Additional Senior Civil Judge and C.J.M., Mysuru, dated 22.11.2019. The reason for delay is mentioned as because of personal commitment and also attending the medical treatment of his daughter, the appellant could not prefer an appeal. Except the denial in the objection statement, no concrete objections have been submitted by the respondents in this appeal. Respondent No.2 alone has filed objections and other respondents have not filed any objections.

11. During the course of the arguments, the learned counsel for the appellants relied upon the judgment of the Hon'ble High Court of Karnataka reported in **2020(2) Karnataka Law Reporter 589** in a case between **Sri.Shivajirao Vs.**

Shri Harishchandra Dawalal Khot @ Nikkam. It is laid down in the said judgment as under:

Limitation Act, 1963 - Section 5 - Application filed for condonation of delay - Delay of 53 days in filing the appeal - Appellant stated that he could not contact his counsel in time due to rush of work - Appellant was working in a sugar factory on shift basis and the distance between the sugar factory and Court was 70 Kms - Minor delay of 53 days ought to have been condoned - Appellate Court has erred in taking a very narrow view in refusing to condone the delay of 53 days thereby causing a miscarriage of justice - Appeal disposed of.

12. As per this judgment, the minor delay of 53 days ought to have been condoned by the court, it is so observed.
13. So far as Section 5 of the Limitation Act is concerned, while condoning the delay, the applicants who are seeking condonation of delay have to substantiate the sufficient cause in preferring the appeal at a belated stage. Sufficient cause as employed by the legislature under Section 5 of the Indian Limitation Act would apply to the court and it is held in various judgments that, a liberal approach is adopted in condoning the delay as it was realized that, i) ordinarily a litigant does not stand to benefit by lodging an appeal belatedly; ii) refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing

the parties. No doubt law says that, every day's delay has to be explained. But when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Therefore, in view of the law laid down by the Hon'ble Supreme Court of India in various judgments, it is not stated by the respondents that, there is a deliberate delay. Therefore, in the considered view of this court, in view of the grounds stated in the application, if the delay is condoned, the meritorious matter would be decided on merits. It should not be too technical in considering this application. Therefore, the appellants in this case have made out acceptable grounds to condone 70 days delay in preferring this appeal. Hence, I record my finding on **point No.1 in the affirmative.**

14. **POINT NO.2:** Resultantly, I pass the following:

ORDER

I.A.I filed by the appellants under Section 5 of the Limitation Act is allowed with no orders as to cost. Delay of 70 days in preferring this appeal is condoned.

(Dictated to the Stenographer, transcribed by her on Computer, revised, corrected and then pronounced by me in open court on this day, the **17th day of April 2021**)

(RAMACHANDRA D. HUDDAR)
Pri. District & Sessions Judge,
Mysuru.

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