

KABC170015242023



**IN THE COURT OF LXXXV ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH-86)
(Commercial Court)**

THIS THE 12th DAY OF SEPTEMBER 2024

**PRESENT:
SRI.ARJUN. S. MALLUR. B.A.L.LL.B.,
(CCH-86)**

**LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com. Misc. No. 54/2023

PETITIONER/

Plaintiff:

M/S Purva Metals Section Pvt Ltd,
A company incorporated under
Companies Act, 2013 having its
Regd. Office at #193, Shivasadan,
4th floor, B Narayanapura,
Opposite to NCC Apartments,
Outer Ring Road, Bangalore-560016
Rep By Its Special Power Of Attorney
Holder Rakesh Kumar Sinha
Aged about 69 years,
Mobile No.7760869967
Email ID: rksinha52@gmail.com

(By Sri. Harikrishna S Holla, Advocate.)

: Versus:

RESPONDENTS/**Defendant:** 1. M/S Standard Agencies

Shop No4, No.186,
Krishnappa Layout,
Doddakenhalli Post,
Opp Indian Petrol Bunk,
Sarjapur Main Road,
Bangalore-35

2. Mr.Nisar Ahmed Qureishi C
S/o Mr. Wazir Ahmen Qureishi C,
Proprietor
M/S Standrad Agencies,
No252, 3rd Main, 8th Block,
Near Corporation Bank,
Koramangala, Bangalore-560095

2(a) Mr. C N Manzoor Ahmed Qureshi,
S/o Late Nisar Ahmed Qureshi C

2(b) Mr. C N Mohsib Ahmed Qureshi,
S/o Late Nisar Ahmed Qureshi C

2(a) Mr. C N Mohsib Hassan Qureshi,
S/o Late Nisar Ahmed Qureshi C

All are residing at C/o M N S Steels,
Anchay Palya Main Road,
Near Madarsa, Kambipura,
2nd Block, Kengeri Hobli,
Bangalore- 560060

(Respondents absent)

ORDERS ON MAIN PETITION

The petitioner has filed this petition under Order 9 Rule 4 of CPC R/w Sec.6 of Commercial Courts Act 2015 for setting aside the order of dismissal passed in Commercial O.S.No.8187/2018 and restore the suit to its original file.

2. It is contended by the petitioner that the petitioner had filed suit in Commercial O.S.No.8187/2018 on the file of this Court for recovery of a sum of Rs.2,16,527/- from the respondents with interest. The Court had ordered issue of summons to the respondents and posted the matter to 12.10.2020. On account of Covid-19 pandemic there was closure of Courts and the case came to be adjourned from 07.12.2020 to 16.07.2021. It is submitted that on account of Covid-19 pandemic the entire country was under lock down and therefore the petitioner could not appear when the case was listed on 16.07.2021 which has resulted in dismissal of the suit. It is submitted that Hon'ble Apex Court in its decision in Civil Appeal No.3/2020 has extended the limitation period from 15.03.2020 till 28.02.2022 being the period of Covid-19 pandemic. It is submitted that even the advocate representing the petitioner did not inform the petitioner about the requirement of taking of

steps which resulted in dismissal of the suit. It is submitted that the petitioner has got a very good case on merits and if the suit is not restored the petitioner would suffer untold hardship and these grounds sought for setting aside the order of dismissal and restore the suit.

3. There is a delay of 708 days and the petitioner has filed I.A No.1 under Sec.5 of the limitation act for condoning the delay. The reasons for delay has been attributed to Covid-19 pandemic and also the counsel not informing the petitioner about the dismissal of the suit and submitted that due to bonafide circumstances petitioner could not appear and sought for condoning the delay.

4. The respondent No.1 is proprietary concern which is represented by deceased respondent No.2. The legal heirs of respondent No.2 a to c were duly service with notice but they remained absent.

5. Heard the Learned Counsel appearing for the petitioner and perused the materials on record.

6. The points that arise for my consideration are as under:-

1) Whether the petitioner has made out justifiable grounds for condoning the delay of 708 days in filing the petition?

2) Whether the petitioner has made out justifiable grounds for setting aside the order of dismissal in Commercial O.S.No.8187/2028 and restore the suit for its original file?

3) what order?

7. My answer in the above points are as under: -

Point No.1:- In the **Negative**.

Point No.2:- In the **Negative**.

Point No.3:- As per final order for the following.

REASONS

8. Point No.1 and 2:- As these points being interlinked with each other to avoid repetition they are taken up together for answering.

Both under the main petition as well as under the application for condoning the delay the petitioner contends that after issuance of process at the first hearing there was Covid-19 pandemic because of which the entire country was under lock down and therefore the petitioner could not appear and take steps and further the advocate for the petition also did not inform regarding the order of dismissal and therefore the delay has been caused in filing the present petition.

9. With respect to the point of delay the Hon'ble Apex Court in the decision reported in **(1987) 2 SCC 107 Collector Land Acquisition, Anantnag and another vs. Mrs. Katiji and others** has laid down the guidelines to be followed while adjudicating an application for condoning the delay as under:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. 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 con-*

done the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

A Division Bench of our Hon'ble High Court in a decision reported in ***ILR 2012 KAR 1544, Vriksha Estates Private Limited vs. State of Karnataka and Others***, while explaining the scope of Sec.5 of Limitation Act has observed as under:

Limitation Act, 1963-Section 5 – Application for condonation of delay under – delay of 68 days in filing the Writ Appeal -HELD, Appellant is bound to explain each day's in filing the appeal by assigning valid and cogent reasons – But the explanation offered by the Appellant for condoning the said delay is omnibus in nature and much credibility cannot be given to the same.

Our Hon'ble High Court in another decision reported in ***ILR 2008 KAR 2559, Honnurappa vs. R. Masthan*** has observed as under:

Limitation Act, 1961-Section 5 – condonation of delay of 36 days in filing the Revision Petition- Consideration of -Grounds for condonation of delay -HELD, Mere making bald statements in the affidavit, without assigning cogent reasons is not a ground to condone the delay.

The Hon'ble Apex Court in a subsequent decision reported in ***(2013) 12 SCC 649, Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*** has laid down the following principles to be applied for condoning delay.

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to

legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants

strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

xiv) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that

adjudication of a lis on merits is seminal to justice dispensation system.

xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

10. With these judicial pronouncements in the background upon considering the facts enumerated in the main petition as well as the application for condonation of delay the petitioner attributes the same for Covid -19 pandemic. Along with the petition the petitioner has produced certified copy of entire order sheet and on going through the same it appears that after filing of the suit in the year 2018 the matter has been listed before lok-adalath twice to workout a settlement and on both occasions neither the plaintiff

nor the defendant have participated. Thereafter on account of Covid-19 pandemic there being closure of the Courts the case has been adjourned without being listed to 06.02.2021. On 16.02.2021 the Courts had started functioning and there was no Covid-19 outbreak and the case was repeatedly listed till 25.05.2021. On all occasions the plaintiff and his counsel have remained absent. However on 06.04.2021 the petitioner had appeared and sought an adjournment for taking further steps which was granted. Again during the second face of the Covid -19 outbreak there was closure of Courts and the case was listed to 16.07.2021. On that date as there is was no appearance and no representation suit came to dismissed.

11. The proceedings of the order sheet would amply disclose that sufficient opportunity has been provided to the petitioner to take necessary steps for securing the presence of defendants but the petitioner has failed to do so. As on the date of dismissal the lock down period had ended and also Courts were functioning on regular basis. Why the petitioner could not appear on 16.07.2021 has not at all been substantiated either in the main petition or in the application for condoning of

delay. Even for condoning the delay, which is nearly 703 days, enormous in nature, no justifiable grounds have been made out. Merely saying that because of Covid-19 pandemic petitioner could not appear cannot be attributed as a justifiable reasons for condoning the delay which is enormous in nature. Therefore considering the facts and circumstances prevailing in the case on hand it can be held without any hesitation that the petitioner has failed to make out sufficient cause for condoning the delay and also for restoring the suit to its original file by setting aside order of dismissal. Hence, for the aforesaid reasons I answer **Point Nos.1 and 2 in the Negative.**

12. POINT NO.3:- In view of my finding on point No.1 and 2, I proceed to pass the following.

ORDER

The I.A. No.1 filed by the petitioner under Sec.5 of the Limitation Act is **rejected.**

Consequently petition filed by the petitioner U/o.9 Rule 4 of CPC R/w Sec.6 of the Commercial Court Act 2015 also stands **rejected.**

No order as to costs.

[Dictated to the Stenographer Grade-III, transcribed by her, corrected and signed by me then pronounced in the Open Court, dated **this the 12th day of September 2024**]

(ARJUN. S. MALLUR)
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.