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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 299/2021

MALABAR CARPET EXPORT Appellant
Through: Mr. Puneet Jaiswal, Advocate
and Mr. P.I. Jose, Advocate.

versus

TIGER LOGISTICS (INDIA) LTD Respondent
Through: Mr. Kshitij Mudgal, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **10.04.2023**
CM APPL. 27382/2021 (delay of 32 months)

1. This is an application preferred on behalf of the Appellant seeking condonation of delay of 32 months in filing the appeal under Section 5 of the Limitation Act, 1963. It is stated in the application that the impugned judgment was erroneously challenged by the Appellant by filing a revision petition under Section 115 read with Section 151 CPC under a *bona fide* belief that revision was maintainable. The revision petition was disposed of as withdrawn by this Court on 09.04.2021 granting liberty to the Appellant to file appropriate proceedings before the appropriate forum, in accordance with law. However, on account of the second wave of COVID-19, Appellant was unable to file the appeal and as soon as the situation improved, the present appeal was filed in August, 2021.

2. Learned counsel for the Respondent opposes the application and submits that 32 months is an unduly long period for condonation and if the Appellant chose to resort to a wrong remedy, the Respondent should not suffer on that count.

3. I have heard the learned counsels for the parties.

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4. It is a matter of record that the Appellant had challenged the impugned judgment by filing C.R.P. 9/2019 and the same was pending in this Court until 09.04.2021 when the same was disposed of on the ground that Civil Revision was not the appropriate remedy. Appellant was given liberty to resort to appropriate proceedings before the appropriate forum in accordance with law. It is also a matter of common knowledge that there was a surge of cases of COVID-19 between April, 2021 to August, 2021 and the Supreme Court was passing orders extending the limitations. Therefore, in my view, the Appellant has made out sufficient cause for condonation of delay.

5. It is a settled law that time spent by a party in prosecuting with due diligence a wrong remedy in good faith will be excluded in computing the period of limitation. The expression 'good faith' qualifies prosecuting the proceedings in the Court which ultimately is found to have no jurisdiction. Therefore, benefit of the period from the filing of the revision petition to the date of its disposal shall inure to the advantage of the Appellant in terms of the law propounded by the Supreme Court in ***Ghasi Ram and Others v. Chait Ram Saini and Others, (1998) 6 SCC 200.***

6. Accordingly, the application is allowed and the delay in filing the appeal is condoned.

7. Application stands disposed of.

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8. List for hearing on 26.05.2023.

JYOTI SINGH, J

APRIL 10, 2023/pkv