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

+ **RSA 74/2021**

**THE NEW FRIENDS COOPERATIVE HOUSING
SOCIETY LTD.**

..... Appellant

Through: Mr. S.C. Singhal and Ms. Poonam
Taneja, Advocates. (M:9810061558)

versus

**M/S. PANGASA EXPORTS THROUGH
MRS. PREM PANGASA & ANR.**

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vibhor Garg, Mr. Keshav
Tiwari and Ms. Derin Joy, Advocates.
(M:9910355771)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **21.11.2022**

1. This hearing has been done through hybrid mode.

REVIEW PET.193/2021

2. This is an application seeking review of the order dated 27th October, 2021 passed by this Court in respect of **CM APPL.37810/2021** on the ground that the delay ought not to have been condoned without advance service to the Respondents.

3. The said application seeking condonation of delay in re-filing the appeal was considered by this Court on the said date. The contention of the Appellant in the said application was that there was a delay of 395 days in refiling the appeal. A perusal of the application shows that the impugned order was of 1st November, 2018 and the appeal was filed on 11th February, 2019 which was stated to be within the period of limitation but the same was returned under objection on 11th March, 2019. The reason given for delay in refiling the appeal in the application was that the records of this appeal were



inadvertently tagged with another writ petition with similar name and was found only during the lockdown period, thus, condonation of delay of 395 days was sought. The Court, considering the fact that the review was listed during the pandemic, condoned the delay in refiling the appeal.

4. The contention of Respondent No.2 in the review petition is that the Appellant did not serve the copy of the appeal or the application seeking condonation of delay in refiling the appeal in advance to Respondent No.2. It is made clear that this Court had not made any observations as to advance service having been properly effected on the Respondents.

5. Without going into these contentions, this Court is of the opinion that the review petition seeking review of the condonation of delay does not deserve to be entertained in view the fact that condonation of delay in refiling is within the discretion of the Court. The Supreme Court ***in Perumon Bhagwathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs (2008) 8 SCC 321*** has held as under:

“The principles applicable for the purpose of considering applications for setting aside abatement had been summarized, inter alia, directing:

XXX XXX XXX

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for



condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

6. This decision has been followed and relied upon in various High Court decisions with the latest being ***Krishanchand and Ors. v. The State of Madhya Pradesh [W.P. No. 19521/20217, decided on 13th October, 2022]*** given by the High Court of Madhya Pradesh.

7. In any event, the Respondents have already moved a substantive application under Order XXXIX Rule 4 CPC for vacation of the stay granted by this Court vide order dated 27th October, 2021 which would be considered on its merits.

8. No ground is made out for review of the order dated 27th October 2021.

RSA 74/2021 and CM APPLs.37811/2021 & 42267/2021

9. List before the Roster Bench on 6th December, 2022 for consideration.

10. This matter shall not be treated as part heard.

PRATHIBA M. SINGH, J.

NOVEMBER 21, 2022/dk/sk