



**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 1090 of 2025
M/s. Deecon India Pvt. Ltd.
VS.
Union of India
CAN 1 of 2025**

For the Petitioner : Mr. Priyankar Saha
Ms. Srijani Mukherjee
Mr. Lalratan Mondal
..... advocates

For the Opposite Party : Mr. Dhiraj Trivedi, Sr. Advocate
Ms. Sumita Sarkar
..... advocates

Reserved on : 20.06.2025

Judgment on : 01.09.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of an Award Debtor and is directed against an order dated December 4, 2024 passed by the Learned Judge, Commercial Court, at Rajarhat, District 24 Parganas (North) in Misc. Case (Com) No. 7 of 2024 [Misc Case no. 29 of 2023 (C.C.)].
2. By the order impugned, the application under Section 5 of the Limitation Act and the application under Order IX Rule 9 of the Code of Civil Procedure praying for restoration of the application under Section 34 of the Arbitration & Conciliation Act, 1996 stood rejected.
3. An agreement dated July 21, 2009 was entered into between the petitioner and the opposite party for construction of a hospital for the Sports Authority



of India in Salt Lake. Disputes and differences arose between the parties and the opposite party terminated the contract. Petitioner invoked the arbitration clause in the said agreement and an Arbitrator was appointed. The Arbitral Tribunal passed an Award dated July 7, 2014 allowing the claim of the opposite party. Being aggrieved by such award, petitioner filed an application under Section 34 of the Arbitration & Conciliation Act, 1996 (for short "the 1996 Act") before the Learned District Judge, 24 Parganas (North) at Barasat which was registered as Misc. (Arb) No. 171 of 2014. Thereafter, the case record was transferred to the learned Judge, Commercial Court, Rajarhat and was registered as Misc Case No. 02 of 2019 (C.C.). Misc. Case no. 02 of 2019 (C.C) stood dismissed for default on September 02, 2019. Petitioner filed an application for restoration of the Misc. Case No. 02 of 2019 along with an application under Section 5 of the Limitation Act for condonation of delay before the Learned Judge, Commercial Court at Rajarhat on March 23, 2023 which was registered as Misc. Case No. 29 of 2023 (C.C.) and subsequently renumbered as Misc. Case (COM) No. 07 of 2024.

4. The applications for condonation of delay and restoration of the Misc Case stood rejected by the impugned order. Being aggrieved, the award debtor has approached this Court.
5. The case made out by the petitioner in the application for restoration and condonation of delay is that the learned advocate for the petitioner fell seriously ill and as a result of which he could not appear in the Misc. Case No. 171 of 2014 for a long period of time. He further contended that in the meantime the said Misc. Case stood transferred to the Commercial Court. The petitioner was not aware of such transfer as neither any notice of such transfer nor any intimation in that regard was served upon the petitioner. He submitted that the petitioner was not aware of such subsequent development. Petitioner came to know of the order of dismissal only after obtaining the certified copy of the order on 13.03.2023 and immediately thereafter filed the applications for restoration and condonation of delay.



6. Mr. Saha contended that the petitioner engaged an Advocate for conducting the Misc. Case No. 171 of 2014 who fell seriously ill and could not appear for which the Misc. Case upon transfer stood dismissed for default. He contended that the learned Judge even after noticing the fact that after transfer of the case no notice was served upon the either side, rejected the applications for condonation of delay and restoration. He further contended that the petitioner should not be penalized for the illness of the learned advocate.
7. Mr. Trivedi, learned Senior Advocate appearing for the opposite party seriously disputed the submission advanced by the learned advocate for the petitioner. He contended that on the prayer of the petitioner, an ad interim order of stay of the Arbitral Award was passed on 28.07.2014 which was extended from time to time till 07.08.2017. He further submitted that thereafter the petitioner did not take any steps in the Misc. Case and the learned Judge directed the petitioner to show cause but the petitioner did not file any show cause. He submitted that in the meantime, the Misc. Case stood transferred to the Commercial Court and even upon such transfer, the petitioner neither took any steps nor complied with the directions passed by the Commercial Court for filing show cause. He contended that there is inordinate delay in filing the application for restoration and such delay has not been explained by the petitioner. He placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Pathapati Subha Reddy (Died) By L.Rs and others vs. Special Deputy Collector (LA)** reported at **2024 SCC Online SC 513** in support of his contention that the learned Judge of the Commercial Court was right in refusing to exercise discretion as there is inordinate delay, negligence and want of due diligence on the part of the petitioner. He concluded by submitting that there is no provision for service of any notice or intimation upon transfer of the case records to the Commercial Court.
8. Heard the learned advocates for the parties and perused the materials placed.



9. Petitioner filed the application under Section 34 of the 1996 Act before the Learned District Judge, 24 Parganas, North at Barasat which was registered as Misc. Case No. 171 of 2014 (Arb).
10. Record reveals that on the prayer of the petitioner an ad interim stay of the Award was passed by the learned District Judge on 28.07.2014 for a limited period which was subsequently extended from time to time till 28.11.2017. On 28.11.2017 and 15.06.2018, the hearing of the Misc. Case was adjourned. On 17.09.2018, petitioner did not take any steps for which he was directed to show cause as to why the Misc. Case shall not be dismissed. However, the petitioner did not file any show cause.
11. The learned Additional District Judge, 4th Court at Barasat, by an order dated 04.07.2019, directed that the case records be sent to the Commercial Court at Rajarhat as per the direction of the learned District Judge. Upon receipt of the case records, the learned Judge, Commercial Court passed an order dated 08.07.2019 directing the petitioner to show cause. On 02.09.2019, the Misc. Case No. 02 of 2019 was dismissed for default upon holding that the petitioner is reluctant or oblivious to proceed with the suit.
12. Section 15 of the Commercial Courts Act, 2015 provides for transfer of suits and applications including applications under the Arbitration & Conciliation Act, 1996 relating to a commercial dispute of a Specific Value pending in any civil court in any district to a Commercial Court.
13. As per the direction of the learned District Judge, 24 Parganas (North) at Barasat, the case record was transferred to Commercial Court at Rajarhat.
14. It is not in dispute that no notice regarding such transfer of the Misc. Case to the Commercial Court was served upon the petitioner nor any intimation was sent after transfer of the case record to the Commercial Court.
15. Though Mr. Tribedi would strenuously contend that there is no provision under the Commercial Courts Act, 2015 for service of notice regarding transfer of any proceeding to the Commercial Court, yet the learned Judge of



the Commercial Court accepted non issuance of such notice as a valid ground for restoration of the Misc. Case and observed that the dismissal order could have been set aside had the conduct of the petitioner been proper all through and also that the petitioner had sufficient explanation for the delay for the intervening period prior to transfer and in filing of the restoration application.

16. It appears to this Court that the learned Judge of the Commercial Court after taking note of the past conduct of the petitioner refused to set aside the order of dismissal of the Misc Case.
17. Mr. Tribedi would vehemently contend that the petitioner was not at all vigilant as he did not take any steps for extension of the interim order nor filed any show cause as directed by the learned Judge.
18. The Hon'ble Supreme Court in the case of **G.P. Srivastava vs. R.K. Raizada** reported at **(2000) 3 SCC 54** held that if "sufficient cause" is made out for non-appearance on the date fixed for hearing, a litigant cannot be penalized for his previous negligence which had been overlooked and thereby condoned earlier. The aforesaid proposition of law was reiterated by three Hon'ble Judges of the Supreme Court in **Rabindra Singh vs. Financial Commissioner, Co-operation, Punjab and others** reported at **(2008) 7 SCC 663**.
19. The aforesaid decisions were delivered in the context of Order 9 Rule 13 of the Code but the same can be applied for restoration of the Misc. Case which stood dismissed for default. To the mind of this Court, the learned Judge of the Executing Court failed to exercise its jurisdiction in a proper manner and was being swayed by the previous conduct of the petitioner and penalised the petitioner for his previous negligence which had been overlooked and condoned earlier.
20. Petitioner cited the illness of the learned advocate as a ground for non-appearance in the Misc. Case prior to its transfer to the Commercial Court. Non service of the notice of transfer and ignorance of the fact of transfer of



the Misc. Case was taken as the ground for restoration of the Misc. Case and the reasons for the delay in filing the restoration application. Non-issuance of the notice for transfer has been accepted by the learned Judge of the Commercial Court as a valid ground for restoration.

21. Mr. Trivedi would contend that had the petitioner been vigilant he would have been aware of the transfer of the Misc. Case to the Commercial Court. No material could be produced by the opposite party to show that the petitioner in spite of being aware of the transfer of the Misc. Case to the Commercial Court did not take any steps.
22. Even if the submission of Mr. Trivedi is accepted that the petitioner should have been more vigilant but the failure on the part of the petitioner to adopt such extra vigilance should not be made a ground for ousting him from litigation. The Hon'ble Supreme Court in **M.K. Prasad vs. P. Arumugam** reported at **(2001) 6 SCC 176** held thus-

“10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside ex parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex parte decree as well.”

(emphasis supplied)



23. In the case on hand, admittedly the petitioner was not notified of the transfer of the Misc. Case to the Commercial Court. The learned advocate of the petitioner was also suffering from illness and in the meantime the Misc. Case was transferred as per the order of the learned District Judge to the Commercial Court.
24. A party may not be aware of such transfer. No material has been produced to show that the petitioner was aware of such order of transfer.
25. To the mind of this Court, petitioner cannot be held to be negligent or that there is want of bona fide on his part. The delay in filing the application for restoration has been satisfactorily explained. In the light of the aforesaid discussion this Court holds that the petitioner has proved to the satisfaction of the Court that there was sufficient cause for his non-appearance and for not filing the restoration application within the stipulated time limit. Accordingly the impugned order calls for interference.
26. In **Pathapati Subha Reddy** (supra), it was held that if a party is found to be negligent or for want of bona fide on his part or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. The said decision cannot come to the aid of the opposite party in view of the observations made hereinbefore.
27. In view of the aforesaid discussion, this Court holds that the learned Judge of the Commercial Court failed to exercise the discretion in the proper manner.
28. For all the reasons as aforesaid, the impugned order stands set aside. The application for condonation of delay stands allowed and the delay in filing the application for restoration of the Misc. Case is condoned. The order dated 02.09.2019 passed in Misc. Case (Com) 07 of 2024 is set aside and the said Misc. Case is allowed and Misc Case No. 02 of 2019 stands restored to its original file and number subject to payment of cost of Rs. 20,000/- by the petitioner to the opposite party within a period of three weeks from the date of receipt of the server copy of this order. The learned Judge of the



Commercial Court at Rajarhat is directed to appoint a date for proceeding with the Misc Case No. 02 of 2019 and proceed in accordance with law if the cost is paid within the aforesaid time limit.

29. CO 1090 of 2025 stands allowed with the aforesaid order and directions. In case the cost is not paid within the aforesaid time limit, this order shall automatically stand recalled without any further reference to this Court and the Civil Revision Application shall stand dismissed.
30. CAN 1 of 2025 accordingly stands disposed of.
31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)