

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

% *Order pronounced on: February 12, 2014*

+ **I.A. No.7327/2012 in CS(OS) No.1094/2012**

PANNALAL RATHORE & ANR. Plaintiffs
Through Ms.Anjali Manish, Adv.

versus

M/S W.H DEETH (BALLABGARH) & CO. Defendant
Through Mr.L.D. Adlakha, Adv. with Ms.Ripu
Adlakha and Mr.S.B. Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiffs have filed the suit for specific performance of the written agreement of sale dated 12th June, 2008 against the defendant company in respect of the property located at premises bearing No.GF-I, Ground Floor, No.75-76, Manisha Building, Nehru Place, New Delhi-110019 (hereinafter referred to as the “suit property”) having a total covered area of 1067 square feet.

2. Along with the suit, the plaintiffs filed an application under Section 151 CPC read with Section 5 of Limitation Act seeking condonation of delay of 269 days in filing of the suit. Admittedly, the suit was filed in the Registry on 3rd June, 2011 which is within limitation. The Registry raised objections on 17th June, 2011 and the plaintiffs collected the papers from the Registry in order to clear the defects. The case of the plaintiffs is that since the defendant proposed for a compromise to the plaintiffs in the suit filed by the defendant for possession, the delay has happened in refilling of the case. It appears from the record that the defendant had been taking adjournments

in its suit informing the Court about the compromise talks and since the plaintiff No.1 is resident of Tamil Nadu and the plaintiff No.2 is resident of USA, it took some time for the proposal of settlement given by the defendant and in the meanwhile, the delay in refiling has occurred.

3. It is submitted that the said delay is neither wilful nor deliberate and the same has occurred only due to the above mentioned circumstances.

4. By order dated 13th February, 2013, the liberty was sought by the learned counsel for the plaintiffs from the Court to file a better affidavit in support of his application and the same was filed on 26th May, 2013. The time for reply was sought by the defendant on 25th October, 2013. But it appears from the record that no reply to the application or affidavit has been filed by the defendant. In the affidavit, it was reiterated that after collecting the relevant papers from the Registry, the same were filed on 19th April, 2012 with a delay of 269 days in view of the reasons that talks for compromise were going on between the parties which is also reflected in orders passed on 8th July, 2011, 3rd October, 2011 and 1st December, 2011 in the suit filed by the defendant against the plaintiffs for possession. The talks of compromise continued till February, 2013 and the matter was even referred to Mediation Centre. Under these circumstances, the delay has occurred in re-filing in the suit.

5. No reply to the application has been filed by the defendant despite of order. The learned counsel for the defendant has orally made his submissions and raised various technical defects in purchasing the court fee by the plaintiffs and in the plaint itself and argued that no sufficient grounds are made in the application for condonation of delay in re-filing.

Counsel has also referred to *Gautam Associates vs. Food Corporation of India*, 2009 (111) DRJ 744. Relevant paras 26, 27 and 30 of the said judgment read as under:

“26. In my view, in accordance with the Original Side rules of this Court, as set out above, the occasion for this Court to consider condonation of delay in re-filing will arise only in a chamber appeal, if any, preferred against the order of the Registrar, declining to register the plaint/petition on the date of first institution. Unless, such an appeal is preferred, the order of the Registrar declining registration is final.

27. In the present case, the Registrar, on 2nd May, 2003 declined the registration dating back to the date of first institution by insisting upon the petitioner to file an application for condonation of delay in re-filing. The remedy of the petitioner against such an order was to prefer a chamber appeal which the petitioner did not do. The said order of the Registrar declining registration dating back to the date of first institution has since attained a finality and this Court cannot now treat the institution to be as on the date of first institution.

30. On a perusal of the aforesaid rules, immediately the distinction between the rules for re-filing on Original Side and in other jurisdictions comes to the fore. While upon delay in re-filing/representation on the Original Side, the Registrar is to decline registration of the document if on the date of such representation it is found to be barred by time, in other jurisdictions such institution is to be merely treated as fresh institution. The reason appears to be that while Section 5 of Limitation Act, is not applicable to suits, as also to OMPs under Section 34, it is, with respect to other jurisdictions.”

6. Another decision is referred by the counsel passed in the case of *J.L. Gugnani vs. Krishna Estate & Ors.*, 184 (2011) DLT 410 passed by Gita Mittal, J. Relevant para 60 referred of the said judgment reads as under:

“60. It may be mentioned that even if the plaintiff was given extension of time and the delay in depositing the Court-fee was

condoned, given the legal principles laid down in the judicial pronouncement noticed above, the institution of the suit would have to relate to the date on which the Court fee was deposited on 3rd (or 9th) January, 2002. The above discussion would show that by this date the relief claimed by the plaintiff had become barred by limitation. Looked at from any angle, there is, therefore, substance in the defendants' objection that valuable rights have ensured to the defendant and the present application for condonation of delay cannot be considered lightly or allowed as a matter of course."

7. As far as case of *J.L. Gugnani* (supra) is concerned, the same was set aside in the appeal being RFA (OS) No.101/2011 wherein the Division Bench condoned the delay in re-filing of the case subject to cost of Rs.10 lac.

8. The Division Bench of this Court in the case of *Delhi Development Authority vs. M/s. Durga Construction Co.*, passed in FAO(OS) No.485-86/2011 dated 7th November, 2013 though did not condone the delay of 166 days in re-filing the objections under section 34 of the Arbitration and Conciliation Act, 1996 on the issue of whether the delay in re-filing can be condoned or not in a petition under Section 34 of the Act, it was observed as under :

"16. In our view, filing of an application and re-filing the same after removing defects, stand on completely different footings in so far as the provision of limitation is concerned. It is now well-settled that limitation does not extinguish an obligation but merely bars a party to take recourse to courts for availing the remedies as available to the party. Thus, in the event a party fails to take expeditious steps to initiate an action within the time as specified, then the courts are proscribed from entertaining such action at the instance of such a party. The rationale of prescribing time limits within which recourse to legal remedies can be taken has been explained by the Supreme Court in the case of *Bharat Barrel and Drum Mfg. Co. Ltd. v.ESI Corpn.:* (1971) 2 SCC 860 as under:-

“7. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims.”

17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies.

20. It follows from the above that once an application or an appeal has been filed within the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.

23. The abovementioned decision of *The Executive Engineers v. Shree Ram Construction* (supra) has also been considered by this Court in *Delhi Transco Ltd. v. Hythro Engineers Pvt. Ltd.* (supra), wherein it has been explained as under:-

“9. The decision in *Competent Placement Services* (supra), in our view, does not say anything to the contrary from what has been observed by the Division Bench in *Shree Ram Construction Co.* (supra). All that has been observed by the same Division Bench on the same day, is that the rigors of condonation of delay in re-filing

are not as strict as condonation of delay in filing under Section 34(3). At the same time, the Division Bench also observed “*but that does not mean that a party can be permitted an indefinite and unexplainable period for re-filing the petition*”.

10. It is in *Shree Ram Construction Co.* (supra) that the Court actually examined as to what is the magnitude of delay in re-filing, which the Court may tolerate and permit to be condoned in a given case. Obviously, there cannot be any hard & fast rule in that respect, and the Court would have to examine each case on its own facts & merits and to take a call whether, or not, to condone the delay in refiling the objection petition, when the initial filing of the petition is within the period of limitation. However, what is to be borne in mind by the Court is that the limitation period is limited by the Act to three months, which is extendable, at the most, by another thirty days, subject to sufficient cause being disclosed by the petitioner to explain the delay beyond the period of three months. Therefore, it cannot be that a petitioner by causing delay in re-filing of the objection petition, delays the re-filing to an extent which goes well beyond even the period of three months & thirty days from the date when the limitation for filing the objections begins to run. If the delay in re-filing is such as to go well and substantially beyond the period of three months and thirty days, the matter would require a closer scrutiny and adoption of more stringent norms while considering the application for condonation of delay in refiling, and the Court would conduct a deeper scrutiny in the matter. The leniency shown and the liberal approach adopted, otherwise, by the Courts in matter of condonation of delay in other cases would, in such cases, not be adopted, as the adoption of such an approach by the Court would defeat the statutory scheme contained in the Act which prescribes an outer limit of time within which the objections could be preferred. It cannot be that what a petitioner is not entitled to do in the first instance, i.e. to file objection to an award beyond the period of three months & thirty days under any circumstance, he can be permitted to do merely because he may have filed the objections initially within the period of three months, or within a period of three months plus thirty days, and where the refiling takes place much after the expiry of the period

of three months & thirty days and, that too, without any real justifiable cause or reason.” (underlining added)

9. In the case of *Nagaland Industrial Raw Materials & Supply Corporation Limited vs. Union of India*, passed in FAO(OS) No.230/2013 dated 8th November, 2013 the matter was remanded back to the Single Judge for returning a finding and for considering as to whether the application for condoning the delay, in refiling the petition under Section 34 of the Arbitration and Conciliation Act, 1996, on the part of the appellant deserved to be condoned or not.

10. In view of the decision rendered by the Division Bench of this Court, it is clear that in case sufficient grounds are made in the application for re-filing, such delay can be condoned even after the expiry of thirty days provided, a strong case of condonation of delay is made out by the party concerned in the application.

11. In the present case I find that there are sufficient grounds shown by the plaintiff as both the plaintiffs were residing outside Delhi i.e. the plaintiff No.1 is resident of Tamil Nadu and the plaintiff No.2 is resident of USA. It cannot be denied the fact that parties in the present suit were trying their best to resolve their disputes from time to time in the suit filed by the defendant for possession against the plaintiffs. The said fact appears from the record that the matter was even sent for mediation. Thus, there is force in the submission of the learned counsel for the plaintiffs. In the present case, it is also not disputed by the learned counsel for the defendant that originally the suit was filed within the prescribed period of time.

12. Considering the overall facts and circumstances of the case, the prayer made in the present application is allowed. The delay of 269 days in refiling is condoned subject to the cost of Rs.20,000/- which shall be paid by the

plaintiffs to defendant within four weeks from today. The application is disposed of.

CS(OS) No.1094/2012

Let the plaint be registered as a suit. Issue summons to the defendants, returnable on 30th April, 2014. Written statement be filed within four weeks from the date of receipt of costs.

I.A. No.7325/2012

Notice for the date fixed.

The plaintiffs have filed the suit for specific performance of the written agreement of sale dated 12th June, 2008 in respect of the suit property.

The brief facts of the case are that defendant was the owner of the suit property. Plaintiff No.1 had entered into an agreement of lease dated 5th December, 2012 for a period of three years with effect from 1st January, 2003 till 21st December, 2005. Thereafter, through registered rectification deed dated 26th May, 2003, the lease period was further extended upto 30th April, 2006. The plaintiff continued the tenancy till 11th June, 2008 by paying enhanced rent.

It is stated that the defendant expressed his willingness to sell the property which is under the occupation of the first plaintiff. Therefore, after deliberations on 12th June, 2008, the plaintiff No.1 and his off shore business friend Vinay Gugnani/plaintiff No.2 on the one side and the defendant on the other side entered into a written agreement of sale dated 12th June, 2008 whereby the defendant agreed to sell the suit property and the plaintiffs consented to purchase the suit property. It is further stated that as per the agreement the defendant agreed to receive a sum of Rs.4,00,12,500/- as sale

consideration for selling the suit property in favour of the plaintiffs. It was agreed between the parties that the plaintiffs were to pay Rs.25,00,000/- as an advance payment towards the purchase of the suit property and thereafter the rest of the amount was to be paid by 30th October, 2008. The agreement had been signed by all the parties. At the time of entering into the agreement of sale, the defendant received a sum of Rs.25,00,000/- as a sale advance on the same day through a cheque No.577643 issued from Oriental Bank of Commerce, Greater Kailash Branch, from the accounts of plaintiff No.2. Thereafter, on 18th June, 2008, the plaintiff No.2 paid a sum of Rs.1 crore by a cheque No.577646 dated 18th June, 2008. The defendant orally and on receipt of the balance sale consideration being Rs.2,75,12,500/- agreed to execute the sale in favour of the plaintiffs and the possession of the suit property continued with the plaintiff No.1, as tenant till 11th June, 2008 and as proposed purchaser from 12th June, 2008.

Having gone through the pleadings and material placed on record, it appears to this Court that the plaintiffs have been able to make out a strong prima facie case for grant of ad-interim injunction and balance of convenience also lies in favour of the plaintiffs and against the defendant. In case the interim order is not passed, the plaintiffs will suffer irreparable loss and injury. Accordingly, the defendant is restrained from creating any third party interest in the suit property. Dasti.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 12, 2014