
(2002) 05 DEL CK 0069

In the Delhi High Court

Case No : IA No"s. 822 and 823/02 in S. No. 949 of 2000

Hector M. Mehta

APPELLANT

Vs

CRB Capital Markets Ltd. and Others

RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2, Order 37 Rule 3, Order 37 Rule 3(7)

Limitation Act, 1963 — Section 5

Citation : (2002) 5 AD 47 : (2002) 98 DLT 127 : (2002) 63 DRJ 408

Hon'ble Judges : Sharda Aggarwal, J

Bench : Single Bench

Advocate : C.M. Oberoi and Surekha Raman, for the Appellant; S.K. Luthra and S.C. Sharma, for the Respondent

Judgement

Sharda Aggarwal, J.—This order shall dispose of defendant No. 1's two applications being IA. 822/02 under Order 37 Rule 2 CPC for filing appearance and IA. NO. 823/02 u/s 5 of the Limitation Act read with Order 37 Rule 3(vii) CPC for condensation of delay in filing the appearance.

2. Defendant No. 1 was served with summons of the suit under Order xxxvII CPC on 25th August, 2000. These summons were served through the Official Liquidator as the defendant No. 1 company had gone in liquidation and the Official Liquidator was appointed as the Provisional Liquidator of the Company. The Official Liquidator entered his appearance through counsel Shri S.C. Sharma, Advocate on 3rd August, 2001. The reason for condoning the delay in filing the appearance is that summons and the copy of the plaint got mixed up with huge and voluminous cases filed by the company which were pending in the Company Court. It is submitted that the delay is inadvertent and unintentional. The plaintiff has opposed the application for condensation of delay on the ground that the application is mis-conceived, not bonafide and does not disclose any ground or sufficient cause for condoning the delay. It is vehemently contended that the reason for condoning the delay that the summons and the copy of the plaint

were got mixed with the voluminous records of the defendant Company lying with the Official Liquidator cannot be taken as a sufficient ground for condoning the long delay of more than one year. It is also contended that though it is stated that appearance was filed on 3rd August, 2001 but application for entering appearance Along with the affidavit has been filed on 23rd November, 2001.

3. No doubt the defendant No. 1 through Official Liquidator has filed appearance much beyond the period of ten days from the date of service of summons, but it is not disputed that defendant No.1 Company had gone into liquidation and the Official Liquidator, attached to Delhi High Court, has been appointed as the Provisional Liquidator of the said Company by the orders of the Company Court dated 22nd May, 1997 in CA.No. 1737/97 in CP. No. 191/97. The plea raised by the learned counsel for the defendant is that the delay in filing the appearance by the Official Liquidator was not intentional and deliberate. Contention is that, in fact there was no reason that the Official Liquidator would have deliberately delayed in filing the appearance. It is submitted that large number of creditors are involved in liquidation of the defendant Company and number of cases which were filed against them are pending in the Company Court. The summons and the copy of the plaint got mixed up in the voluminous records of the cases pending against the defendant Company and that was the reason that the Official Liquidator could not file appearance within the requisite time.

4. As per the provisions of Order xxxvII Rule 3 sub-rule 7 CPC, the Court may excuse the delay in entering appearance for sufficient cause shown by the defendant. The words "sufficient cause" though have not been defined but have been interpreted by the Supreme Court in a catena of judgments in reference to Section 5 of the Limitation Act. It is held in a number of judicial pronouncements that the words "sufficient cause" should be liberally construed so as to advance substantial justice. The Supreme Court in N. Balakrishnan Vs. M. Krishnamurthy, held that in the absence of anything showing malafides or deliberate delay as a dilatory tactic, Court should normally condone the delay. It has also been held that length of delay is not material, acceptability of the Explanation is the only criterion as sometimes delay of the shortest range may be uncontainable due to want of acceptable Explanation whereas in certain other cases, delay of a very long range can be condoned as the Explanation thereof is found satisfactory. It is held that there is no presumption that delay in approaching the Court is always deliberate.

5. In the instant case, though the delay is almost of one year, but in the stated facts no malafides can be attributed for the delay nor the delay can be treated as deliberate by way of a dilatory strategy. In the given facts of the case, it should not be overlooked that refusal to condone the delay would result in foreclosing the defendant from putting forth his defense. In the peculiar facts of this case, I find that the Explanation for condoning the delay is neither deliberate nor malafide. There is sufficient cause for condoning the delay in filing the appearance. The delay is accordingly condoned and the appearance of defendant

No. 1 through the Official Liquidator is taken on record.

6. The applications are accordingly disposed of.