

(2023) 08 DEL CK 0111

In the Delhi High Court

Case No : Review Petition 176 Of 2023 and IA 12062 Of 2023 In Arbitration
Petition No. 249 Of 2014

M/S North India Transport Corporation

APPELLANT

Vs

M/S Hindustan Coca Cola Beverages Pvt Ltd

RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2023) 08 DEL CK 0111

Hon'ble Judges : Sachin Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sachin Datta, J

Review Petition 176/2023 and I.A 12062/2023 (condonation of delay)

1. The present review petition has been filed seeking review of order dated 20.09.2019, whereby the application of the petitioner for restoration of ARB.P.249/2014 [which was dismissed in default on 15.01.2015], was dismissed.

2. The review petition is accompanied by an application i.e. I.A. 12062/2023 under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 1420 days in filing the said review petition.

3. It is averred in I.A. 12062/2023 as under:-

"2. That the present Arbitration Petition was dismissed by the order dated 20.09.2019 on account of fault on the part of the erstwhile counsel of the Petitioner. The erstwhile Counsel kept providing false information to the petitioner and when the petitioner asked for the File of the case so that can inquire the status of his case, the Counsel of the petitioner even stopped responding to the calls of the petitioner. The petitioner made several attempts to find the Counsel so that he can take his Case File but unfortunately, he failed to

do so.

3. That it was only on 03.08.2019 that the petitioner came to know about address of the Counsel and finally received the case file on 07.08.2019. Upon receiving the Case File, the petitioner came to know that the case has been dismissed vide order dated 15.01.2019. It is reiterated that the petitioner was totally unaware of the dismissal of his case prior to this. The petitioner most humbly submits that his erstwhile Counsel never informed the true status of his case to the petitioner.

4. That after 03.08.2019, the Petitioner taken advised from the new counsel engaged, who advised the Petitioner to file the review petition.

5. That thereafter, from 1st week of September, 2019, the house of the Petitioner/Applicant was under renovation. The files, documents, records, etc. from the Petitioner's house was relocated and on account of the same, the documents which were part of the present case, were misplaced, which were traced on in this month"

4. The averments in the said application are bereft of any material details; the same do not show any sufficient cause to condone the inordinate delay. Admittedly, the applicant received the case files from his erstwhile counsel on 07.08.2019 and filed application for restoration of arbitration petition [ARB.P.249/2014] through a new counsel. The said application for restoration was dismissed vide order dated 20.09.2019 on the ground that the same suffered from inordinate delay. The relevant portion of the said order dated 20.09.2019 reads as under:-

"5. The only ground taken in the application is that the erstwhile counsel for the petitioner had kept him in the dark as to the proceedings and the petitioner was unaware of the dismissal of the petition. The petitioner avers that he came to know the address of the counsel only on 03.08.2019 and received the case filed on 07.08.2019. The petitioner claims to have deposited the amount required for process fee with the counsel in good time. It is also stated that the petitioner has filed a complaint against his erstwhile counsel before the Bar Council of India.

6. Having heard learned counsel for the petitioner, I do not find sufficient cause having been disclosed to permit restoration of the petition at this belated stage. The plea that the petitioner was unaware of the developments in his case cannot be accepted 4 ó years later. The petitioner is engaged in business and the contracts in question are commercial in nature. His plea that he was unaware of legal processes or that he relied upon counsel are insufficient to justify the delay and restore the petition. An inordinate delay of this nature and the failure of counsel to respond satisfactorily to the petitioner's enquiries ought to have caused the petitioner to take alternative steps within a reasonable period. Restoration of proceedings cannot be granted as a matter course or merely on the ground of mercy or sympathy alone, as pleaded by counsel for the petitioner. The Court must consider whether sufficient cause is shown to entitle the litigant

to visit the consequences of revival of the petition on the rights of the other parties to the lis. The expression "sufficient cause" has been interpreted in the Supreme Court inter alia in *Balwant Singh (dead) vs. Jagdish Singh* (2010) 8 SCC 685 as follows:-

25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

xxxx xxxx xxxx

27. The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party."

5. As such, the application seeking restoration of arbitration petition ARB.P. 249/2014, was found to be inordinately belated. The recalcitrance and intransigence on the part of the petitioner/applicant is evident from the fact that even the present review petition is hopelessly time barred and is accompanied by IA 12062/ 2023, seeking condonation of delay of 1420 days in filing the same

6. The averments made in I.A. 12062/2023 are also quite vague in nature. It is not the case of the applicant that he had no knowledge about the order dated 20.09.2019. The only explanation given for the delay is that since the house of the petitioner/applicant was under renovation from 1st week of September, 2019, the documents which were part of the present case, got misplaced. It is noticed that the order dated 20.09.2019 came to be passed in presence of the applicant's counsel, in the 3rd week of September, 2019. As such, the explanation of the applicant is found be incorrect and is ex-facie lacking in credibility. The applicant has failed to provide sufficient explanation for the period from 20.09.2019 till the present review petition came to be filed. The circumstances leading to the discovery of the purportedly misplaced documents have also not been disclosed in the application.

7. In *Majji Sannemma v. Reddy Sridevi*, 2021 SCC OnLine SC 1260, the Supreme Court has held as under:-

"16. At this stage, a few decisions of this Court on delay in filing the appeal are

referred to and considered as under:—

17. In the case of Ramlal, Motilal and Chhotelal (supra), it is observed and held as under:—

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

18. In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

19. In the case of Pundlik Jalam Patil (supra), it is observed as under:— "The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

20. In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

21. In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".

8. In view of the aforesaid reasons, I.A 12062/2023 is dismissed; consequently, Review Petition 176/2023 also stands dismissed.