

CS(COMM) 22/2018

Narender Kumar Sharma v. Maharana Pratap Educational Center

2018 SCC OnLine Del 13146

In the High Court of Delhi at New Delhi

(BEFORE JAYANT NATH, J.)

Dr. Narender Kumar Sharma & Ors. Plaintiffs;
Mr. N. Prabhakar and Mr. Dhruv Sharma, Advs.
v.

Maharana Pratap Educational Center & Another Defendants.
Mr. Om Prakash and Ms. Sudeepti, Advs.

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Decided on December 13, 2018

The Order of the Court was delivered by

JAYANT NATH, J. (Oral)

IA No. 17120/2018

1. By this application, the appellant seeks condonation of delay in filing the accompanying appeal. It is pleaded in the application that the delay took place due to some serious issues being faced by the counsel for the appellant on her personal front.

2. For the reasons stated in the application, the delay is condoned.

3. The application stands disposed of.

OA No. 154/2018

4. This appeal is filed against the order dated 01.10.2018 whereby the right of the defendants to file the written statement was closed as 120 days prescribed in CPC for filing the written statement have expired.

5. Learned counsel for the appellant submits that the written statement was filed within time i.e. within 120 days but there was delay in re-filing the same. She relies upon the order of the learned Joint Registrar passed on 23.07.2018 where it is noted that the written statement has been filed but has been returned under office objection.

6. Learned counsel appearing for the appellant has opposed the appeal. He submits that re-filing tantamounts to fresh filing. He relies upon the judgment of the Division Bench of this court in *Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.*, 2015 (X) AD Delhi 378 to contend that re-filing would tantamount to fresh filing and delay cannot be condoned.

7. It is admitted fact that the defendants have filed the written statement on 07.05.2018 after being served on 08.01.2018.

8. It is settled legal position that delay in re-filing has to be considered on a different footing. Reference in this context may be had to the judgment of the Division Bench of this court in *S.R. Kulkarni v. Birla VXL Ltd.*, 1998 (3) RCR (Civil) 436 where the court held as follows:—

“8. Notwithstanding which of the aforesaid Rules are applicable, the question of condensation of delay in re-filing of an application has to be considered from a different angle and viewpoint as compared to consideration of condensation of delay in initial filing. The delay in re-filing is not subject to the rigorous tests which are usually applied in excusing the delay in a petition filed under Section 5 of the

Limitation Act (See *Indian Statistical Institute v. Associated Builders*, (1978) 1 SCC 483 : AIR 1978 SC 335. In the present case, the initial delay of 7 days in filing the application for leave to defend stood condoned and that has not been challenged by any of the parties. It is no doubt true that the counsel for the appellant had not been very diligent after filing of application for leave to defend on 19th August, 1995 as counsel did not check whether the application was lying in the Registry with any objection or not. Considering however, the nature of the objections, it was a matter of removal of the objections by the counsel and on the facts of the present case, it is difficult in this case to attribute any negligence to the party. On the facts of the case, the effect of negligence or 'casual approach', which would be appropriate term to be used here, of the counsel on his client, does not deserve to be so rigorous so as to deny condensation of delay in re-filing the application. The casual approach of the counsel is evident as no timely efforts were made firstly to find out after filing application on 19th August, 1995 as to whether the Registry had raised any objection or not. Secondly, despite order of the Joint Registrar dated 9th January, 1996, the objection was removed only on 4th March, 1996 i.e. after the date which the Joint Registrar had fixed for the application being posted for hearing before the Court. When the application was refiled on 4th March, 1996, one would expect the person filing to be more careful thereby not giving an opportunity to the Registry to raise any other objection. But that was no so. The result was that the second objection was raised which, as noticed above, was removed on 21st March, 1996 but application was refiled only on 27th March, 1996. Apart from this casual approach, we do not find any mala fide intention on the part of the appellant to delay the proceedings. When there is negligence or causal approach in a matter like this in re-filing of an application, though the court may not be powerless to reject an application seeking condensation and may decline to condone the delay but at the same time, passing of any other appropriate order including imposition of cost can be considered by the court to compensate the other party from delay which may occur on account of re-filing of the application."

9. Similarly, the Supreme Court in *Indian Statistical Institute v. Associate Builders*, (1978) 1 SCC 483 : AIR 1978 SC 335 held as follows:—

"10. The High Court was in error in holding that there was any delay in filing the objections for setting aside the award. The time prescribed by the Limitation Act for filing of the objections is one month from the date of the service of the notice. It is common ground that the objections were filed within the period prescribed by the Limitation Act though defectively. The delay, if any, was in representation of the objection petition after rectifying the defects. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation. If the petitioner satisfies the court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act. The application filed before the High Court for condonation of the delay in preferring the objections and the order of the court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return the Registrar did not even specify the time within which the petition will have to be re-presented."

10. I may now note that the judgment of the Division Bench of this court, relied by the learned counsel for the appellant in *Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.* (supra) was set aside by the Supreme Court in *Northern Railway*

v. *Pioneer Publicity Corporation Pvt. Ltd.*, (2017) 11 SCC 234, wherein it has held as follows:

"4. We find that said Section 34(3) has no application in refiling the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing."

11. Accordingly, I allow the appeal. The written statement is taken on record if re-filed within one week from today subject to costs of Rs. 15,000/-.

12. The appeal stands disposed of.

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13. List before the Joint Registrar on 24.01.2019. for further proceedings.

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