

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

CR No. 14/2016

Date of Order: 29.09.2018

Abdul Rashid Shora

Vs.

Hamidullah Shah

Coram:

Hon'ble Mr. Justice Rashid Ali Dar, Judge

Appearance:

For petitioner(s): Mr. F. A. Wani, Advocate.

For respondent(s): Mr. Manzoor Ahmad Dar, Advocate.

i/	Whether to be reported in Press/Media?	Yes/No
ii/	Whether to be reported in Digest/Journal?	Yes/No

1. The learned 3rd Additional Munsiff, Srinagar, has passed an order on an application filed for condoning the delay (in filing the application for restoration application) on 17.12.2015, with the following observations:

- i) *Heard and pursued the application/ objections titled to the application, order of Hon'ble high Court passed on 30.08.2013 and order of dismissal of restoration application passed on 26.03.2012 from order of this court dated 26.03.2012 it is clear that application for restoration of suit was allowed on 20.11.2011 subject to payment of costs Rs. 7000/- (seven thousands) however till 26.3.2016 costs were not paid as such restoration application stands dismissed vide order dated 26.3.2012 from the order of Hon'ble high court passed on 30.8.2013 it is clear that hon'ble high court the parties to first bring civil litigation to an end and with that observation had dismissed the arbitration application the present application for*

condonation for delay qua restoration application has been titled on 10.6.2014 nearly after 9 months from the date when Hon'ble high court dismissing the arbitration application had directed parties to bring first civil litigation to and end. The application titled for condonation of delay does not disclose any sufficient cause why applicant remained slept for over 9 months time the only reason maintained is that applicant was not communicated the future course of action by the counsel thus delay caused is purely of counsel of applicant. When Hon'ble high court order dated 30.08.2013 had issued specific directions to the applicant to first bring civil litigation to and end while dismissing arbitration application the plaintiff/ applicant had not many options regarding future course of action but to file the instant application however applicant failed to do so what the time.

- ii) Therefore keeping in view the above facts and circumstances the application of plaintiff/ applicant seeking condonation of delay qua restoration application to its original no is found without merits and as such is dismissal application after due complication be consigned to records.*

2. This order has been assailed by the petitioner herein, while contending that:

- i) That during the currency of the civil miscellaneous appeal preferred against the orders passed on interim application, the trial court dismissed the index of the case in default, the knowledge which the petitioner exacted on the day of appearance as slated by the appellate court therefore the application for the restoration of the suit to its original number was filed, later allowed subject to the cost of Rs. 7000/-, lest the same is deposited, the petitioner filed an application for appointment of arbitrator in terms of sec 11(6) of the scheme provided for appointment of arbitrators by Chief Justice of J&K High Court, resulting in sequel its dismissal on the premise of pendency of civil suit.*
- ii) That the petitioner in the follow up had to file an application for restoration of the suit to its original number with the*

condonation of delay so that the suit is properly withdrawn and the fresh arbitration petition is maintained.

3. It is further contended that order is bad for the following reasons:

- i) *Because the trial court has not appreciated the events as have occurred in the matter, exclusively the observation made by the Hon'ble Chief Justice while deciding the arbitration petition, in as much as, the mandate of liveliness of maintaining the fresh arbitration application is not lend a fair treatment, as is expected on the annals of principles of nature justice, as the facts and circumstances of the case were worth consideration against the motions for restoration and withdrawal of the suit thus summarily causing grave miscarriage of justice.*
- ii) *Because the order impugned equates with the termination of the suit while closing the remedy supra of the petitioner and is thus amenable to the revisional jurisdiction on the touch stone of the principles of law holding the domain.*
- iii) *Because the petitioner's grievance against the respondent continues unresolved despite been in litigation since 2006 and now when the appropriate remedy in the nature of arbitration is rendered live, the impugned order is heavily coming in the way of dispensation of justice, the aspect which may kindly be considered while granting this petition.*
- iv) *Because the hard earned money invested with the respondent in the partnership is in question against which the future of the petitioner's family is related thus begging a serious appeal for consideration of this revision petition.*
- v) *Because the impugned order is passed in post-haste-post manner and is eating into the vitals of the pleadings narrated in the application for restoration of the suit with condonation of delay.*

4. I heard learned counsel for the petitioner as well as for the respondent.

5. Learned counsel for the petitioner submitted that the learned trial Court ought to have been liberal in condoning the delay in the light of facts and circumstances as quoted in the application present therein. The approach of the learned Trial Court in dismissing the application in the facts and circumstances was arbitrary and unjust. On the other hand

learned counsel for the respondent contended that order has been passed on a proper application of law, facts and circumstances and so revisory jurisdiction cannot be exercised.

6. Considered, the rival arguments and the material before me. The learned trial Court after noting the facts and circumstances in which the application has been filed has observed that the approach of the petitioner in asking the condonation of delay in filing the application was without any merit. It has taken note of the order passed by the High Court alongwith previous conduct of the petitioner in appreciating the matter.
7. It cannot be ignored that law of limitation may act harshly against a person, if he has been indolent in prosecution of the case within the time frame prescribed by law. The Courts have no powers to extend the limitation on mere asking. Sufficient cause is required to be spelled out, so that period of limitation can be extended. The diligence and *bona-fides* are manifestly absent in the approach of the petitioner herein, while approaching the Court below. Omission to file the petition within the time frame has to be considered in the attending circumstances and not in isolation. The length of the delay may be a fact to be reckoned with having regard to the conduct of party and forbearance on its part to approach the Court within reasonable period, but such period may melt its insignificance if it appears that party has acted in good faith. It would be apt to quote the observations of their lordships in **the privy council in General Fire and Life Assurance Corporation Ltd. Vs Janmahomed Abdul Rahim, AIR 1941 PC 6**, herein; to see how the discretion in extending the period of limitation has to be executed.

“a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognized by law.”

8. In P.K. Ramachandran Vs. Stat of Kerela & Anr., AIR 1998 SC 2276, the Apex Court has said while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:

“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.”

9. It would be also appropriate to quote the observations of their Lordships of Hon’ble Apex Court in Esha Bhattacharjee Vs Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649 laid down various principles inter alia:

“v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

10. Viewing the present case, in the light of settled principles of law, I am of the opinion that impugned order cannot be said to be without jurisdiction. It cannot also be said that the learned Trial Court had acted in exercise of its jurisdiction illegally or with material irregularity. No case as such is made for interference under section 115 CPC.

11. The petition is dismissed accordingly.

(Rashid Ali Dar)
Judge

Srinagar
29.09.2018
"Ishaq"