ODC-2

IA NO. GA-COM/1/2024
In IPDPTA/118/2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
(Commercial Division)

AZIONARIA COSTRUZIONI MACCHINE AUTOMATICHE A C M A
Vs
THE CONTROLLER OF PATENTS AND DESIGNS AND ANR

Before:
The Hon'ble Justice RAVI KRISHAN KAPUR
Date: 25th November 2024

Appearance:
Mr. Shuvasish Sengupta, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. A. Das, Adv.
…for appellant.
Mr. Sunil Kr. Singhania, Adv.
…for respondent.

The Court: This is an application under Section 5 of the Limitation Act 1963.

Briefly, the application is for grant of a patent in respect of an invention titled as "A method for manufacturing pouches of cohesionless material". Initially, the above application for grant of patent was rejected on 15 November, 2019. Being aggrieved by the order, the appellant had filed a review application under Section 77(1)(f) of the Patents Act, 1970. The review application was also rejected on 18 August, 2020. It is primarily alleged that on the ground of Covid-19 that the petitioner is entitled to exclusion of the period of limitation between 15 March, 2020 to 28 February, 2022, including an additional period of 90 days.

It is further alleged on behalf of the applicant that being an Italian company they had no connection with India at the contemporaneous point of time when the application for grant of patent was rejected. It was only in May 2023 that an Advocate practising in Delhi was engaged and steps for filing of the appeal and this application were initiated. Ultimately, the finalized drafts were only prepared on 6 July, 2024 and this application filed. In such view of the matter, it is alleged that there has been a delay in the filing of this appeal and the same be condoned.

On behalf of the respondent authorities, it is contended that there are no grounds warranting condonation of delay. There has been inordinate and unexplained delay in the filing of this application which does not warrant any condonation. This application was filed only on 25 June, 2024 after a delay of more than 597 days from the date of rejection of the review application and 625 days from the date of passing the order dated 15 November, 2019. There are no grounds which justify allowing the prayer for condonation and this application is liable to be dismissed.

It is well settled that the pre-conditions for condonation of delay in the filing of such applications is the existence of *sufficient cause*. The grounds or sufficient cause demonstrated in such cases would depend on the facts of every case. There is no straight jacket formula in accepting or rejecting such applications. Nevertheless, such applications ought not to be allowed in a routine or mechanical manner. The discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression *'sufficient cause'* as occurring in Section 5 of the Act cannot be liberally interpreted if negligence,

inaction or lack of bona fides is writ large. There is simply no power to condone delay on equitable grounds.

In a decision passed in Special Leave Petition (Civil) no. 31248 of 2018, *Pathapati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector*, it has been held as follows:

> *"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*
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> *(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
>
> *(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
>
> *(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
>
> *(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
>
> *(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
>
> *(vi) Merely because some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
>
> *(vii) Merits of the case are not required to be considered in condoning the delay; and*
>
> *(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning*

the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

In *Basawaraj and Anr. vs. Special Land Acquisition Officer, (2013) 14 SCC81* it has been held:

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

This application was filed on 12 July, 2024. The particulars of the delay in the filing of this application are as follows:

A)	Delay from order dated 15th November 2019	Days
	90 days expired on 15.02.2020	-
	From 16.02.2020-14.03.2020	28
	Covid period from 15.03.2020-28.02.2022	NIL
	Further 90 days exempted	NIL
	From June 2022-December 2022	214
	From January 2023-9th July 2023	190
		432
	Section 5 Application filed on 12.07.2024	
	From 11th July 2023 to 12.07.2024	193
		625
B)	Delay from Review order dated 18.08.2020	Days
	90 days expired on 18.11.2020	-
	From 19.11.2020-28.2.2022	NIL
	Further 90 days exempted	NIL
	From June 2022-December 2022	214
	From January 2023-9th July 2023	190
		404
	Section 5 Application filed on 25.06.2024	
	From 11th July 2023 to 12.07.2024	193
		597

Though there was a prayer for condonation of delay in the appeal, there was no separate application for condonation of delay nor any grounds made out in the appeal. Ultimately, an application for condonation was only filed only on 12 July, 2024.

The impugned order is dated 15 November, 2019. The limitation for filing the application expired on 31 May 2022 inclusive of the 90 day extension. The applicant has failed to justify its delay from 1 June 2022 till 12 July 2024. As such, there is an admitted delay of more than 625 days for which there is no explanation at all. The alleged grounds of Covid-19, confusion of IP stakeholders and the delay in engaging an Advocate are ill founded, misconceived and untenable. None of the above grounds justify condonation of delay.

In view of the above, the applicant has been grossly negligent and indolent. The liberal approach in considering sufficiency for delay cannot be allowed to override the substantial laws of limitation. Concepts such as liberal approach, justice oriented approach and substantial justice cannot be employed to jettison the laws of limitation. There is nothing to demonstrate as to why the applicant has been sleeping over its rights for a period of 625 days. The notarisation of this application on 24 June, 2024 and filing of the same on 12 July 2024 only highlights the continuous negligence and causal approach by the applicant in pursuing this *lis*. In view of the above, there are no grounds which have been made out justifying condonation of the delay.

As such, there is no merit in this application. GA-COM/1/2024 stands dismissed. Consequentially, IPDPTA 118/2023 also stands dismissed on the ground of maintainability.

(RAVI KRISHAN KAPUR, J.)

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