A H. DOHIL CONSTRUCTIONS CO. (P) LTD.

v.

NAHAR EXPORTS LTD. & ANR.

(Civil Appeal Nos. 7886-7887 of 2014)

AUGUST 20, 2014.

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[FAKKIR MOHAMED IBRAHIM KALIFULLA AND SHIVA KIRTI SINGH, JJ.]

Delay/Laches:

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Delay in filing appeal – 9 days delay in filing Regular First Appeals and 1727 days delay in refiling the same – High Court condoning the delay and admitting the appeals subject to payment of cost to other side – Held: Law of limitation is based on sound public policy and therefore the principle that D *in the absence of bona fide reasons the applications for condonation of delay should be strictly construed assumes significance — Courts are required to weigh the scale of balance of justice in respect of both parties and this principle cannot be given a go-by under the guise of liberal approach* E *even if it pertains to refiling – In the case on hand, delay in refiling was 1727 days – It is bounden duty of respondents to have satisfactorily explained such a long delay in refiling – There was no convincing explanation as to how respondents were disabled from rectifying the defects pointed out by* F *Registry and refiling the appeal papers within time – As a matter of fact the appeal papers were filed without payment of any court fee – This only affirms the stand of appellant(s) that there was no bona fide in respondents' claim – There is, therefore, gross negligence and total lack of bona-fides in* G *respondents' approach and the impugned order of High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot be*

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sustained – Impugned order is set aside – Direction to admit appeals of respondents is also set aside and the same shall stand dismissed – Principles to be applied while dealing with application for condonation of delay – Culled out – Limitation – Code of Civil Procedure, 1908 – s. 144 – O. 41, r. 3A – Maxim, vigilantibus non dormientibus jura subveniunt. A B

The instant appeals arose out of the order of the High Court condoning 9 days delay in filing Regular First Appeals and 1727 days delay in refiling those appeals. It was contended that when the appeals were presented without payment of court fee and there was 9 days delay in filing the appeals, as per O. 41 r. 3A, CPC, it was mandatory to file an application for condoning the delay, which was not done by the respondents; and when the appeal papers were returned for complying with the defects, there was enormous delay of 1727 days in refiling the same. C D

Allowing the appeals, the Court

HELD: 1.1. Section 149, CPC empowers the court to accept the payment of court fee at a later point of time if the appeal papers had been filed within the due date. Therefore, in the case on hand, when the appeals were presented with a delay of 9 days without payment of proper court fee and when the required court fee was duly paid at the time of refiling, it should be construed that such payment of court fee was deemed to have been paid on the date on which the appeals were originally presented by virtue of the implication of s.149, CPC. [para 9] [435-B-C] E F G

1.2. This Court in *Pradeep Kumar has held that there is no such rule prescribing for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed without an accompanying** H

A application to condone the delay, the consequence cannot be fatal and if the appellant subsequently files an application to condone the delay before the appeal is rejected, the same should be taken up along with the already filed memorandum of appeal. [para 11] [436-C-F]

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State of M.P. & Anr. vs. Pradeep Kumar & Anr. 2000 (3) Suppl. SCR 235 = (2000) 7 SCC 372 – relied on.

2.1. It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating C to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High D Court, no fault could be found with the filing of the papers into the Registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it was the bounden duty of the respondents to have satisfactorily explained such a long delay in refiling. There was no E convincing explanation as to how the respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The respondents only attempted to throw the blame on the previous counsel (whose identity was not disclosed) to F whom appeal papers were entrusted for filing in September 2007. As a matter of fact the appeal papers were filed without payment of any court fee. This only affirms the stand of the appellant(s) that there was no *bona fide* in the respondents' claim and that they were G seriously interested in challenging the judgment of the trial court as against the non-grant of relief of specific performance. In this context the maxim *vigilantibus non dormientibus jura subveniunt* (Law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. [para 19-20] [440-D-F; 441- H B-G]

2.2. In *Esha Bhattacharjee*, inter alia*, the following principles were culled out to be kept in mind while dealing with such applications for condonation of delay:

"(*iv*) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(*v*) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

(*viii*) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(*ix*) The conduct, behaviour 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.

(*x*) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation." [para 22] [443-F-H; 444-A-D]

****Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.* 2013 (9) SCR 782 = (2013)12 SCC 649 – relied on.**

2.3. Applying the said principles to the case on hand, it has to be stated that the failure of the respondents in

A **not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation and satisfactory reasons, as gross negligence and lacks in *bonafides* as displayed on the part of the respondents.**
B **[para 23] [444-E-F]**

2.4. In the rejoinder filed by the appellant(s) to the respondents' counter, the appellant(s) has explained as to how they had to spend a huge amount to upkeep the property by approaching the authorities of the Delhi
C **Municipal Corporation, the enormous amount spent to the tune of Rs.28,00,000/- by way of house tax from the year 2004 up to date and various other improvements made in the property during the period when the delay in the matter of filing of the appeals and refiling was made**
D **by the respondents. Therefore, the principle that the law of limitation is based on sound public policy and, therefore, the principle that in the absence of *bona fide* reasons the applications for condonation of delay should be strictly construed assumes significance. [para 21]**
E **[442-B-D]**

Tamil Nadu Mercantile Bank, Ltd. (represented by its Chairman), Tuticorin vs. Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai and another
F **1990 (I) LLN 457 – approved.**

2.5. Courts are required to weigh the scale of balance of justice in respect of both parties and this principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an
G **application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit**
H **for specific performance and when the trial court**

exercised its discretion not to grant the relief for specific performance and to grant only damages and if the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons explaining the enormous delay of five years involved in getting its appeals registered. [para 23] [445-A-D]

2.6. There is, therefore, total lack of *bona-fides* in the respondents' approach, and the impugned order of the High Court in having condoned the delay of 9 days and 1727 days in filing as well as refilling respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot be sustained. The impugned order is set aside. Direction to admit the Regular First Appeals of the respondents is also set aside and the said appeals shall stand dismissed. [para 24] [445-E-G]

***B. Madhuri Goud vs. B. Damodar Reddy* (2012) 12 SCC 693, *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai* (2012) 5 SCC 157, *N. Balakrishnan vs. M. Krishnamurthy* 1998 (1) Suppl. SCR 403 = (1998)7 SCC 123, *Mahant Bikram Dass Chela vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others* 1978 (1) SCR 262 = (1977) 4 SCC 69 - cited**

Case Law Reference :

(2012) 12 SCC 693	cited	para 7
(2012) 5 SCC 157	cited	para 7
2013 (9) SCR 782	relied on	para 7
2000 (3) Suppl. SCR 235	relied on	para 7
1998 (1) Suppl. SCR 403	cited	para 7
1978 (1) SCR 262	cited	para 7

A **1990 (I) LLN 457 approved para 21**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7886-7887 of 2014.

From the Judgment and Order dated 16.12.2013 of the
B High Court of Delhi at New Delhi in CM No. 11364 and 11365 of 2012 in R.F.A. No. 270 of 2012.

WITH

C Civil Appeal Nos. 7888-7889, 7890-7891, 7892-7893, 7894-7895, 7896-7897, 7898-7899, 7900-7901, 7902-7903, 7904-7905, 7906-7907, 7908-7909, 7910-7911, 7912-7913, 7914-7915, 7916-7917, 7918-7919, 7920-7921, 7922-7923, 7924-7925, 7927-7928 and 7930-7931 of 2014.

D Ajit Kumar Sinha, Rajesh Manchanda, Rajat Manchanda, Pramanand Gaur for the Appellant.

Jayant Bhushan, Ajay Bhargava, Vanita Bhargava and Karun Mehta (For Khaitan & Co.) for the Respondents.

E The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted

F 2. Leave granted.In these appeals the challenge is to the common order passed by the High Court of Delhi dated 16.12.2013 in CM. Nos.11355 of 2012 and 11354 of 2012 in RFA No.268 of 2012 etc. There were as many as 22 Regular First Appeals numbered as RFA No.268 of 2012 to RFA
G No.288 of 2012 and RFA No.319 of 2012 in which the above miscellaneous petitions were filed. In each of these appeals, there were two miscellaneous petitions, one for condoning the delay of 9 days in filing the first appeals and another for condoning the delay of 1727 days in refiling those appeals.

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3. By the impugned order, the High Court by stating that for the reasons stated in the applications and subject to payment of cost of Rs.50,000/- to the counsel appearing for the Respondents in those applications within one week, the delay of 9 days in filing the appeals and 1727 days in refiling the appeals was condoned and the applications were disposed off.

4. Simultaneously, the Regular First Appeals were admitted for hearing. It was also noted therein that since there were connected 22 Regular First Appeals already preferred by the Respondents in those miscellaneous petitions which were admitted for hearing and since the questions involved were common in both sets of appeals, the High Court directed the appeals in which delay was condoned to be tagged along with those appeals numbered as RFA No.219 of 2008 and 21 other appeals for hearing on 29.04.2014.

5. Aggrieved by such condonation of delay in filing and refiling the appeals, the Appellant(s) have come forward with these appeals before this Court. Before us, Mr. Sinha learned Senior Counsel for the Appellant(s) contended that the High Court seriously erred in condoning the long delay of 1727 days in refiling the appeals apart from condoning the delay of 9 days in filing the appeals, without initially satisfying itself as to whether there was any cause, much less sufficient cause for condoning such a long delay. Learned Senior Counsel would contend that the judgment impugned was dated 30.05.2007 and the appeals were filed on 06.09.2007 on which date there was a delay of 9 days, that these appeals were presented by the Respondents without payment of any Court fee, that when the appeal papers were returned for complying with various defects, in the year 2008, the Respondents filed the scrutiny charges on 11.04.2008, as per receipt No.73 dated 11.04.2008. That while on the one hand no reason, much less sufficient cause was shown for the enormous delay of 1727 days in the matter of refiling of the appeal papers, according to him when the appeals were presented without payment of Court fee and

A without appropriate application for condoning the delay of 9 days, which was mandatory as stipulated under Order XLI Rule 3A of the Code of Civil Procedure, the Appellant(s) cannot be heard to say that the appeals were filed in time. The learned Senior Counsel by referring to the Appellate Side Rules of the B Delhi High Court, in particular, the amended Rule 5(3), wherein it is stipulated that once the appeal papers are returned for complying with any defects and such papers are not refiled within the time granted by the Registry, the maximum of which is only 30 days, such delay in the matter of refiling would result C in treating the filing of the appeals on any subsequent date as fresh filing, in which event the delay involved would be 1825 days in filing the appeals themselves. The learned Senior Counsel also contended that though it was contended on behalf of the Respondents that the counsel who initially filed the D appeals committed default in not filing the appeals in time, as well as, in not representing the papers after it was returned and failed to furnish the requisite details as to when and what date such default occurred and by whom it was committed and that such stand taken was not supported by any affidavit of the advocate, the High Court ought not to have condoned such an E enormous delay of nearly 5 years in such a casual way, especially in the absence of an affidavit of the concerned advocate himself.

6. As against the above submissions, Mr. Jayant Bhushan, F learned Senior Counsel appearing for the Respondents submitted that by condoning the delay of only 9 days in filing the appeals and the condonation of delay of 1727 days in refiling the appeals, no prejudice was caused to the Appellant(s) as against the very same judgment passed in the suit, the G Appellant(s) themselves having preferred the first appeals which were already admitted and the appeals of the Respondents herein were also admitted and tagged along with those first appeals preferred by the Appellant(s). The learned Senior Counsel contended that Section 149 CPC empowers the Court H to condone payment of any deficit in the Court fee, either in

whole or in part and, therefore, no fault can be found with the High Court in having condoned the delay though, the entire Court fee was paid by the Respondents much later and not at the time of first filing. The learned Senior Counsel also contended that this Court has made a distinction as between delay in filing the appeals and refiling and, therefore, when the reasons adduced by the Respondents were convincing and the High Court was satisfied with the reasons while condoning the delay in filing the appeals as well as their refiling and having imposed a heavy cost of Rs.50,000/- while condoning the said delay, whatever prejudice caused to the Appellant(s) was duly offset and in these circumstances no interference is called for. As far as Order XLI Rule 3A CPC was concerned, according to the learned Senior Counsel the said provision has also been interpreted by this Court to the effect that the same cannot be construed as a mandatory one but only directory and that the filing of the application for condoning the delay in filing the appeals on any subsequent date to the initial filing would date back to the date of such initial filing.

7. The learned Senior Counsel for the Appellant(s) relied upon the decisions of this Court in *B. Madhuri Goud vs. B. Damodar Reddy* reported in (2012) 12 SCC 693, *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai* reported in (2012) 5 SCC 157, *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 SCC 649. In support of his submissions the learned Senior Counsel for the Respondents relied upon the decisions in *State of M.P. and another vs. Pradeep Kumar and another* reported in (2000) 7 SCC 372, *N. Balakrishnan vs. M. Krishnamurthy* reported in (1998) 7 SCC 123, *B. Madhuri Goud* (supra) and *Mahant Bikram Dass Chela vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others* reported in (1977) 4 SCC 69.

8. At the very outset, we wish to note the submission of learned Senior Counsel for the Appellant(s) as regards the one

A based on the amended Rule 5 (3) of the High Court Appellate Side Rules. The said submission was countered by learned Senior Counsel for the Respondents contending that such a Rule cannot run counter to the period of limitation prescribed under a substantive statute. According to the learned Senior B Counsel for the Respondents when a substantive legislation prescribes the period of limitation and if any proceeding was initiated based on such a provision contained in the Act, the Rules of the High Court relied upon by the Appellant(s) cannot set at naught the benefit contained under a substantive provision C under an enactment. By way of an analogy, the learned Senior Counsel pointed out that under the provisions of the Arbitration Act, for filing any objection under Section 34 as against an award, a period of limitation is prescribed and if the objection is filed within the said period of limitation under the provisions D of the Arbitration Act, by relying upon the amended Rule 5(3) of the High Court Rules, the period of limitation prescribed under the Arbitration Act cannot be varied on the ground that the refiling was belated as per the Rule and thereby the original filing under Section 34 should be construed as belated in point of time which would create incongruities and, therefore, the E reliance placed on the amended Rule 5(3) cannot be accepted. The learned Senior Counsel who appeared for the Appellant(s) fairly submitted that the Appellant(s) is not pressing the said submission and would be rest contended with the submissions on other grounds. In the light of the said categoric stand made F by the Appellant(s), we do not wish to go into the said issue in the present proceedings and leave it open for consideration in any other appropriate case.

9. It was also contended on behalf of the Appellant(s) that G the claim of the Respondents that the appeals were filed with a delay of only 9 days cannot be accepted, in as much as the appeal papers were filed without any payment of Court fees and, therefore, it cannot be considered as proper filing at all. It was contended that the Court fees was paid only at the time of H refiling in 2012 and, therefore, the delay in filing the appeals

themselves should be calculated as 1825 days. As far as the said submission is concerned, we find force in the contention of learned Senior Counsel for the Respondents in having placed reliance upon Section 149 CPC. The said section empowers the court to accept the payment of Court fee at a later point of time if the appeal papers had been filed within the due date. Therefore, in the case on hand, when the appeals were presented with a delay of 9 days without payment of proper Court fee and when the required Court fee was duly paid at the time of refiling, it should be construed that such payment of Court fee was deemed to have been paid on the date on which the appeals were originally presented by virtue of the implication of Section 149, CPC. Therefore, we do not find any substance in the said contention made on behalf of the Appellant(s).

10. It was then contended by learned Senior Counsel for the Appellant(s) that under Order XLI Rule 3A, it is stipulated that when an appeal is presented after the period of limitation, it should be accompanied by an application supported by an affidavit setting forth the facts on which the Appellant(s) relied to satisfy the Court that there was sufficient cause for not preferring the appeals within the period prescribed. The contention of the Appellant(s) was that since at the time of filing of the appeals after 9 days delay, no application for condonation of delay of the said 9 days was filed along with the supporting affidavit simultaneously and that such application was filed only in the year 2012, the appeals cannot be stated to have been filed in accordance with the said provision. It was further contended that since the applications for condoning the delay were filed only in the year 2012, the appeals can only be construed as having been filed in the year 2012 in which event, the delay in filing the appeals cannot be taken as 9 days but 1825 days.

11. Though in the first blush, the said submission appears to be plausible, that very submission was repelled by this Court

A in *Pradeep Kumar* (supra). While considering that very submission, this Court has held as under in paragraphs 10 and 11:

> "**10.** What is the consequence if such an appeal is not accompanied by an application mentioned in sub-rule (1) of Rule 3-A? It must be noted that the Code indicates in the immediately preceding Rule that the consequence of not complying with the requirements in Rule 1 would include rejection of the memorandum of appeal. Even so, another option is given to the court by the said Rule and that is to return the memorandum of appeal to the Appellant for amending it within a specified time or then and there. It is to be noted that there is no such rule prescribing for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed in such appeal without an accompanying application to condone delay the consequence cannot be fatal. The court can regard in such a case that there was no valid presentation of the appeal. In turn, it means that if the Appellant subsequently files an application to condone the delay before the appeal is rejected the same should be taken up along with the already filed memorandum of appeal. Only then the court can treat the appeal as lawfully presented. There is nothing wrong if the court returns the memorandum of appeal (which was not accompanied by an application explaining the delay) as defective. Such defect can be cured by the party concerned and present the appeal without further delay.
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> **11.** No doubt sub-rule (1) of Rule 3-A has used the word "shall". It was contended that employment of the word "shall" would clearly indicate that the requirement is peremptory in tone. But such peremptoriness does not foreclose a chance for the Appellant to rectify the mistake, either on his own or being pointed out by the court. The word "shall"

in the context need be interpreted as an obligation cast on the Appellant. Why should a more restrictive interpretation be placed on the sub-rule? The Rule cannot be interpreted very harshly and make the non-compliance punitive to an Appellant. It can happen that due to some mistake or lapse an Appellant may omit to file the application (explaining the delay) along with the appeal."

12. Having regard to the said pronouncement of this Court with which we fully concur, the said submission also stands rejected.

13. It was then contended on behalf the Appellant(s) that the period of delay in filing the appeals, as well as a long delay of 1727 days in the refiling was not properly explained by the Appellant(s). It was pointed out to us that in the applications filed in support of condoning the delay in filing the appeals, as well as, in refiling the appeal papers there was virtually no explanation at all covering the period of delay. When we examined the said submission by making reference to the relevant applications filed on behalf of the Respondents in the applications filed for condoning delay of 9 days in filing the appeals, the stand of the Respondents was that after the judgment and decree dated 30.5.2007 the appeals were filed vide Diary Entry No.118619 on or about 06.09.2007, which was delayed by 9 days. The Respondents claimed that delay in filing the appeals came to its knowledge only when it received the objections in the paperbook refiled on 20.03.2012 and that immediately after it came to its knowledge the lower court files and records which were entrusted with the previous counsel which were found to have been dumped in a record room in Gurgaon were traced by contacting the said counsel and in that process the delay of 9 days in filing the appeals came to be ascertained. It was, therefore, contended that the said delay of 9 days in filing the appeals was unintentional and inadvertent and was not in the control of the Appellant(s). Except for the above averments stated in the applications dated 28.05.2012,

A no other details were found in the said applications. The said applications were resisted by the Respondents.

14. In the applications filed for condoning the delay of 1727 days in refiling, it was stated that after the judgment was B pronounced by the trial Court on 30.05.2007, the counsel was instructed to file an appeal, that the appeal was drafted and was sent to the Respondents for signature by the counsel, which was sent back to the counsel for filing and that the counsel informed about the filing of the appeals on or about 06.09.2007 vide C Diary No.118619. According to the Respondents, it was made to believe that the appeals filed on its behalf were tagged along with the RFA No.234 of 2008, filed by the Appellant(s) as against that part of the judgment which went against them.

15. The other contentions were that there was a change D of counsel towards the end of 2011 and that on 25.02.2012 all files were sent to the newly appointed counsel along with the papers relating to appeals of the Appellant(s) in RFA No.234 of 2008 and thereafter, the newly appointed counsel asked for the lower court files and on 29.02.2012 the pertinent files were E sent to the newly appointed counsel. Only thereafter, the Respondents came to know that the appeal papers were taken back after objections vide Diary No.118619. It was claimed that the Respondents were under the *bona fide* impression that its previous counsel filed the appeals in time and its appeals were F also tagged along with the appeals of the Respondents. It was also claimed that when the Respondents took up the matter with its previous counsel about the issue of delay in the refiling, no satisfactory reply was received, that the records handed over to the Respondents by its previous counsel was G incomplete and that it took sometime for it to collect the incomplete records and that is how the delay of 1727 days occurred in the matter of refiling which was unintentional and inadvertent. Based on the above averments, it was prayed that delay of 1727 days in refiling the appeals should be condoned.

H 16. The above applications were resisted by the

Appellant(s) by filing a detailed reply on 16.11.2013 pointing out that the applications filed in support of applications in condoning the delay of 9 days in filing, as well as 1727 days in refiling did not explain the enormous delay, that the claim of the Respondents that they were not aware of the return of the files for complying with the defects till 2012 was an incorrect statement, that such an enormous delay in the refiling as well as delay of 9 days in filing was not supported by an affidavit of the concerned advocate, that the Appellant(s) when they filed their appeals as against that part of the judgment by which damages of Rs.3,00,000/- was directed to be paid to the Respondents was complied with by depositing the amount into Court while filing the appeals, that since nothing was heard from the Respondents as regards the non-grant of specific performance by the trial Court for nearly five years, the Appellant(s) had made lot of improvements in their property and, therefore, the condonation of delay in filing the appeals as well as refiling as had been ordered by the High Court would cause very serious prejudice to the Appellant(s). It was, therefore, contended that the order of the High Court was liable to be interfered with.

17. Learned Senior Counsel appearing for the Appellant(s) also pointed out that while condoning such an enormous delay in refiling as well as delay of 9 days in filing the appeals, the High Court has not even stated that it was satisfied with the reasons adduced in support of the applications, apart from the fact that no reasons were stated for condoning the delay except imposing a cost of Rs.50,000/-. The learned Senior Counsel, therefore, contended that the approach of the Respondents in having moved the Court while filing the applications for condoning the delay in filing as well as refiling was a very casual approach and there was no *bona fide* in their action and, therefore, the order of the High Court called for interference.

18. On the other hand Mr. Jayant Bhushan, learned Senior Counsel for the Respondents contended that the High Court

A having exercised its discretion while condoning the delay by imposing a heavy cost of Rs.50,000/-, this Court should not interfere with such a discretion exercised by the High Court. Learned Senior Counsel also contended that the delay was only 9 days in filing the appeals and that the delay involved in
B refiling should not be construed so very strictly and that since the Appellant(s) has filed its appeals as against the very same judgment of the trial Court which is pending and the High Court having admitted the Respondents' appeals also and tagged it along with the Appellant(s)' appeals, by deciding the appeals
C of both parties on merits, no prejudice is going to be caused to the Appellant(s).

19. Having considered the respective submissions, on this question, we find that the submissions made on behalf of the Appellant(s) are forceful. It is true that the delay in filing the
D appeals was only 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made
E within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the concerned party or whomsoever was entrusted with the filing of the papers into the Registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it definitely calls for a
F closer scrutiny as to what was the cause which prevented the concerned party from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals.

G 20. In the case on hand, the delay in refiling was 1727 days. As rightly pointed out by the learned Senior Counsel for the Appellant(s), the Respondents paid the scrutiny charges on 11.04.2008 as disclosed in the Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11.04.2008,
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it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the Respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the Respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the Appellant(s), we find that there was no convincing explanation as to how the Respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The Respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the Appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial Court. As a matter of fact the appeal papers were filed without payment of any Court fee. This only affirms the stand of the Appellant(s) that there was no *bona fide* in the Respondents' claim and that they were seriously interested in challenging the judgment of the trial Court as against the non-grant of relief of specific performance. We also fail to see as to how the Respondent No.1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. In this context the maxim *Vigilantibus Non Dormientibus Jura Subveniunt* (Law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The Respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days delay involved in filing the appeals.

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21. We express our total disinclination to countenance such a stand made on behalf of the Respondents. In this respect, the claim of the Appellant(s) that serious prejudice would be caused to the Appellant(s) merits acceptance. In the rejoinder filed by the Appellant(s) to the Respondents' counter, the Appellant(s) has explained as to how they had to spend a huge amount to upkeep the property by approaching the authorities of the Delhi Municipal Corporation, the enormous amount spent to the tune of Rs.28,00,000/- by way of house tax from the year 2004 up to this date and various other improvements made in the property during the period wherein the delay in the matter of filing of the appeals and refiling was made by the Respondents. Therefore, the principle that the law of limitation is based on sound public policy and therefore in the absence of *bona fide* reasons the applications for condonation of delay should be strictly construed assumes significance. In this context a Division Bench decision of the Madras High Court in *Tamil Nadu Mercantile Bank, Ltd. (represented by its Chairman), Tuticorin vs. Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai and another* reported in 1990 (I) LLN 457 can be usefully referred to. Paragraphs 14 and 17 are relevant for our purpose, which read as under:

> "14. We are unable to agree with the reasoning of the learned Judge that no litigant ordinarily stands to benefit by instituting a proceeding beyond time. It is common knowledge that by delaying a matter, evidence relating to the matter in dispute may disappear and very often the concerned party may think that preserving the relevant records would be unnecessary in view of the fact that there was no further proceeding. If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the

matter. Hence to view a matter of condonation of delay with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious. In our view, each case has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation.

17. .....Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent?"

22. We may also usefully refer to the recent decision of this Court in *Esha Bhattacharjee* (supra) where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principle Nos.(iv), (v), (viii), (ix) and (x) of paragraph 21 can be usefully referred to which read as under:

"(*iv*) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(*v*) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

A (*viii*) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal
B delineation.

(*ix*) The conduct, behaviour 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
C of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(*x*) If the explanation offered is concocted or the grounds
D urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

23. When we apply those principles to the case on hand,
E it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in *bonafides* as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper
F details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along
G with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of *bonafides* in its approach. It also requires to be stated that in the case on hand, not refiling the appeal
H papers within the time prescribed and by allowing the delay to

the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

24. We, therefore, find total lack of *bona-fides* in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the Respondents in RFA Nos.268/2012, 269/2012, 270/2012, 271/2012, 272/2012, 273/2012, 274/2012, 275/2012, 276/2012, 277/2012, 278/2012, 279/2012, 280/2012, 281/2012, 282/2012, 283/2012, 284/2012, 285/2012, 286/2012, 287/2012, 288/2012 and 319/2012 is also set aside and shall stand dismissed. No costs.

Rajendra Prasad Appeals allowed.