

INTELLECTUAL PROPERTY APPELLATE BOARD

Guna Complex Annexe-I, 2nd Floor, 443, Anna Salai, Teynampet,
Chennai-600018

C.O.D.No.17/08 in S.R No.358/08/TM/IPAB

FRIDAY, THIS THE 22ND DAY OF JANUARY, 2010

Hon'ble Ms.S.Usha

...Vice-Chairman

Hon'ble Shri Syed Obaidur Rahaman

...Technical Member

M/s Manipal Education Network,
Madhav Nagar,
Manipal 576 119.

Appellant

(By Advocate Shri Govinda Raju K)

Vs.

1. M/s Manipal Group
The Commercial Corporation of India Ltd.,
S-501 Manipal Centre,
47, Dickenson Road,
Bangalore 560 042.

2. The Deputy Registrar of Trade Marks,
Office of the Trade Marks Registry,
IPR Building, Indl. Estate,
SIDCO RMD Godown Area
Adjacent to Eagle Flask),
G.S.T.Road,
Guindy,
Chennai 600 032.

...Respondents

(By Advocates Ms. P.V.Rajeswari & Ms. R.S.Ramya for R1)

ORDER No 23/2010

Hon'ble Ms.S.Usha, Vice- Chairman:

The COD No. 17/08 is to condone the delay of 99 days in filing the appeal in S.R. No.358/08/TM/IPAB

2. The appeal under S.R.No.358/08 has been preferred against an order dated 27.02.2008 passed by the Deputy Registrar of Trade Marks dismissing opposition No.MAS-58809 and allowing application No.659807 in class 16 to proceed to registration subject to amending the specification

of goods in respect of "Lottery Tickets included in class 16" by way of filing of Form TM-16.

3. The application for condonation of delay has been filed on the grounds that the appellant had gone on business tour abroad and came to Bangalore recently and hence the delay. The other reason is that the counsel on perusal of the instant opposition realized that the appeal was not filed and hence the delay in filing the appeal. Delay is neither willful nor wanton but due to reasons stated above.

4. The first respondent herein filed their counter statement to the condone delay application. The first respondent stated that the number of days delay mentioned in the first page of the application is one month and in the second page it is 99 days. The reason is that the appellant had gone abroad and it does not clearly state as to when the copy of the order was received by the appellant and when the appellant went abroad. The statement has been signed by the counsel when the appellant is a Trust. No proof to substantiate the reason as to the appellant had gone abroad because the appellant is a Trust and who went abroad is not specific. The delay is only to delay the respondent obtaining registration. The delay only shows the negligence on the part of the appellant with no sufficient reason. There is no merit in the application and ought to be dismissed.

5. We have heard the counsel for appellant and the first respondent

6. The learned counsel for the appellant submitted that the delay was for the reason that the appellant had gone abroad.

7. The learned counsel for the first respondent submitted that no sufficient reason given for the delay and the reason given is not substantiated by any documentary evidence. The counsel also submitted

that for a single application No.659807 there had been 9 oppositions by 9 different entities, in such case it is represented by 9 different persons but the reason given for the delay is one and the same for all the 9 condone delay applications. The counsel, therefore, prayed that the delay ought not to be condoned and be dismissed.

8. We have heard the condone delay application. It may be worthwhile to refer to two judgments of the Apex Court. One is the case of **“Ramnath Sao @ Ramnath Sahu and Others Vs. Goverdhan Sao and Others reported in 2002 (3) SCC 195 = 2002(3) LW 417.** It is a case under Section 5 of the Limitation Act to condone the delay of 130 days of the case of appellant No.3, of 5 years in the case of the appellant No.22 and 3 years in the case of the appellant No.41, in applying to bring on record their legal representatives and substituting the heirs. The learned judges set aside the judgment of the Division Bench of the High Court confirming the order of the learned single judge and condoned the delay by allowing the petition. Of course, that arises out of an application to bring the legal representatives on record, where the learned judges have laid the following principle:

“11. Thus it becomes plain that the expression “sufficient cause” within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute “sufficient cause” or not will be dependent upon facts of each case. There cannot be straightjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation, furnished should be the rule and refusal an exception. more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation

furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way”.

Another judgment of the Supreme Court is also worth mentioning. In the case of “**N. Balakrishnan Vs. M. Krishnamurthy – 1998 (7) SCC 123 = 1999 (1) LW 739**”, there was a delay of 883 days in filing the application for setting aside the ex-parte decree. The Trial Court condoned the delay. However, when the matter was taken to the High Court by way of Civil Revision petition, the learned single judge, set aside the order of the Trial Court and dismissed the petition for condoning the delay. That order of High Court was set aside by the Supreme Court. Justice K.T. Thomas, speaking for the Court, succinctly laid down the law observing thus in paras 8, 9 and 10:

“8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes, delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to

such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

The learned judge of the Supreme Court further observed in paragraphs 11, 12 and 13 which runs thus:

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating new persons to seek legal remedy of approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain V. Kuntal Kumari* (1969) 1 SCR 1006 and *State of W.B. Vs. Administrator, Howrah Municipality* (1972) 1 SCC 366.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses."

8. From the above principle laid down by the Apex Court, the legal position is: (1) the word "sufficient cause" should receive liberal construction to do substantial justice; (2) what is the sufficient cause? is a question of fact in a given circumstance of the case; (3) It is axiomatic that condonation of delay is the discretion of the Court; (4) length of delay is no matter, but, acceptability of the explanation is the only criterion; (5) the rules of limitation are not meant to destroy the rights of the parties, but, they are meant to see that the parties do not resort to dilatory tactics to seek their remedy promptly; (6) if the explanation does not smack of mala fides or it is to put forth as part of the dilatory strategy, the court must show utmost consideration to the suitor; (7) if the delay was occasioned by the party deliberately to gain time, then court should lean against acceptance of the explanation and while condoning the delay, the court should not forget the opposite party altogether."

9. Based on the above principles laid down by the Apex Court, we have to consider whether the delay can be condoned for the reasons stated by the appellant. While considering the application to condone the delay, the interest of the other side should also be considered. On cases of condonation of delay the courts should adopt liberal approach. On perusal of the application for condoning the delay, it is seen that the reason has not been supported by any documentary evidence. The appellants being different entities are represented by different persons. The explanation given for the delay is that the appellant had gone abroad, it is not clear as to whether all the nine signatories had gone abroad. All the applications are stereotyped. Even if it is to be taken that they all had gone abroad, there is no proof for the same. The condone delay application is not supported by affidavit of the appellant. The condonation

of delay application has been signed and filed by the counsel. Only the statement of case has been filed and the same has been signed by the counsel. It is necessary to mention the statement in para 2 and 3 of the statement of case:-

"2. The instant appeal was not filed within the time as the appellant had gone on business tour abroad and came to Bangalore recently.

3. I say, on perusal of the copy of the instant opposition under appeal and only it was realized that the appeal in the present proceedings has not been filed."

10. On perusal of the above mentioned paragraphs it is not clear for what reason there was a delay whether it was appellants' absence in India or due to the counsel's negligence. The view of the Apex Court is that the length of delay is not the main criteria but the explanation should be reasonable. In the instant case, we do not find any reason which is sufficient to condone the delay. As already observed, is it the litigant's absence or the counsel's mistake is not clear. When the reason for the delay is not properly explained, we are to conclude that the delay is not due to any sufficient cause. As such there is no sufficient cause to condone the delay.

11. Accordingly the COD No.17/08 is dismissed.

Sd/-
(Syed Obaidur Rahaman)
Technical Member

Sd/-
(S.Usha)
Vice -Chairman

Vvrk

