

IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 2nd DAY OF JUNE, 2025****PRESENT****THE HON'BLE MR V KAMESWAR RAO ACTING CHIEF JUSTICE****AND****THE HON'BLE MR JUSTICE T.M.NADAF****COMMERCIAL APPEAL NO.161 OF 2023****BETWEEN:**

C. KRISHNAIAH CHETTY AND SONS
PRIVATE LIMITED
AN INDIAN COMPANY
INCORPORATED
UNDER THE COMPANIES ACT, 1956
CIN: U27205KA1979PTC003692
HAVING ITS REGISTERED OFFICE AT
35 COMMERCIAL STREET,
BENGLAURU – 560 001

AND CORPORATE OFFICE AT
THE TOUCHSTONE, A BLOCK
3-3/1 MAIN GUARD CROSS ROAD,
BENGALURU – 560 001
REPRESENTED HERINE BY ITS
CHIEF FINANCIAL OFFICER
SRI. S.A. SURESH,
S/O SRI. A.S. ARUNACHALAM

...APPELLANT

(BY SRI. MANDEEP KALRA, ADVOCATE FOR
SRI. HITESH GOWDA B J, ADVOCATE)

AND

1. DEEPALI CO. PRIVATE LIMITED
(NOW FRAUDULENTLY CALLED C.
KRISHNAIAH CHETTY & CO. PVT. LTD.
- MATTER PENDING ADJUDICATION)
AN INDIAN COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956

CIN: U03691KA1982PTC004687
 35 COMMERCIAL STREET,
 BENGALURU – 560 001
 REPRESENTED HERINE BY ITS
 DIRECTOR
 SRI. C. GANESH NARAYAN,
 S/O LATE SRI. C.V. NARAYAN

- 2 . SRI. C. GANESH NARAYAN
 S/O LATE SRI. C.V. NARAYAN
 INDIAN, HINDU,
 AGED ABOUT 44 YEARS,
 RESIDING AT 2A, NITESH MAYFAIR,
 KASTURBA CROSS ROAD,
 BENGALURU – 560 001.
 AND ALSO AT 44 OSBORNE ROAD,
 ULSOOR, BENGALURU – 560 042

- 3 . SMT. C. VALLI NARAYAN
 W/O LATE SRI.C.V.NARAYAN
 INDIAN, HINDU,
 AGED ABOUT 78 YEARS,
 RESIDING AT 2A, NITESH MAYFAIR,
 KASTURBA CROSS ROAD,
 BENGALURU – 560 001.
 AND ALSO AT 44
 OSBORNE ROAD, ULSOOR,
 BENGALURU – 560 042

- 4 . SMT. VIDYA NATARAJ
 W/O SRI. C. GANESH NARAYAN
 INDIAN, HINDU,
 AGED ABOUT 44 YEARS,
 RESIDING AT 2A, NITESH MAYFAIR,
 KASTURBA CROSS ROAD,
 BENGALURU – 560 001
 AND ALSO AT 44 OSBORNE ROAD,
 ULSOOR, BENGALURU – 560 042

- 5 . BLUESTONE JEWELLERY & LIFESTYLE
 PRIVATE LIMITED
 AN INDIAN COMPANY INCORPORATED
 UNDER THE COMPANIES ACT, 1956
 CIN: U72900KA2011PTC059678
 SITE NO.89/2, LAVA KUSHA
 ARCADE,

MUNNEKOLAL VILLAGE, OUTER RING
ROAD, MARATHALLI,
BENGALURU – 560 037.
PRESENTED HEREIN BY ITS CHIEF
EXECUTIVE OFFICER
SRI. GAURAV SINGH KUSHWAHA

...RESPONDENTS

(BY SRI. ARUNKUMAR, SENIOR COUNSEL FOR
SRI. KRUTIKA RAGHAVAN, ADVOCATE FOR C/R1-R3;
SRI. DEEPAK BHASKAR, ADVOCATE FOR R5)

THIS APPEAL IS FILED UNDER SECTION 13(1A) OF COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015 READ WITH ORDER 43 RULE 1(R) OF THE CPC, 1908, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 17.02.2022 PASSED BY THE LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-86) AT BENGALURU IN COM.OS.NO.306/2020, ETC

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 29.04.2025 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, **T.M. NADAF J.**, PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. V KAMESWAR RAO ACTING CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE T.M.NADAF)

This appeal is directed against the order dated 17.02.2022, passed on I.A. filed by the defendant / respondent Nos.1 to 3, under Order-VII, Rule-11(d) of CPC, read with Commercial Courts Act, 2015 ('Act of 2015' for short) for rejection of the plaint in COM.O.S.

No.306/2020, passed by the LXXXV Additional City Civil Judge (CCH-86) Bengaluru, along with an application in I.A.No.1/2023 seeking condonation of delay of 366 days in preferring the appeal.

2. The parties will be referred to as per their ranking before the trial court for easy reference.

3. This appeal was listed before this Court on 29.04.2025, for hearing on Interlocutory Application i.e., I.A. No.1/2023 seeking condonation of delay and after hearing both sides, the application was reserved for orders. Though the matter is reserved only for consideration of application seeking condonation of delay in filing the appeal, for better understanding a brief outline of the facts are stated as under:

The plaintiff / appellant filed a suit in Com.O.S.No.306/2020 against the defendants /respondents herein seeking for a judgment and decree, restraining the defendants and persons claiming through them by way of perpetual injunction using the trade marks C.Krishniah Chetty Corp., C. Krishniah Chetty & Co., Chetty & Co., Chetty, C. Krishniah Chetty & Co 1869, Chetty & Co., 1869 at any location in connection with the jewellery business in any manner including sales, promotion and marketing etc., alongwith other reliefs.

4. An application filed along with the plaint for temporary injunction came to be dismissed by an order dated 20.02.2021, on the premise that in view of the undertaking before the National Company Law Appellate Tribunal (for short 'NCLAT') dated 19.12.2019, the suit is not maintainable without a resolution of Board of Directors of the company delegating authority to file suit and also in view of Section-430, read with Section-241 of the Companies Act.

5. Aggrieved by the order, an appeal in Commercial Appeal No.61/2021, was filed before this Court. A Co-ordinate Bench of this Court on 27.05.2021, dismissed the appeal holding that the Trial Court was right in observing that the suit was defective and not maintainable, as per the reasons more particularly stated in paragraph Nos.44 and 45 of the order, which reads as under:

"44. In the present case, it is not in dispute that the Company has not authorized the Chief Financial Officer by passing a Board Resolution to institute the suit or appeal on behalf of the Company. In a suit or appeal, "a prima facie case" would depend upon the facts of the said case and in the present appeal having regard to the undisputed facts of the case, wherein equal shareholders of the Company have been fighting against each other, in the absence of a Board Resolution, the suit or appeal instituted by the Chief Financial Officer of the Company is definitely defective and therefore,

there is no prima facie case made out for a trial in the suit and in the absence of the party making out a case for trial, the prayer made by the said party for grant of interim orders/interim injunctioris in such a suit cannot be favoured.

45. The trial court has considered all these aspects of the matter and has rightly rejected the applications I.A.Nos. 1 to 3 filed in the suit and while disposing of the applications, the Trial Court has observed that the suit itself was defective and not maintainable. The said order does not suffer from any illegality or perversity, which calls for interference by this court."

6. The defendant / respondent Nos.1 to 3 upon receipt of summons appeared and filed an application under Order-VII, Rule-11(d) of CPC, read with Act of 2015, seeking to reject the plaint as barred by law in terms of Section-430 of the Companies Act 2013, and Section-8 of Arbitration and Conciliation Act 1996 ('Act of 1996' for short), so also on the ground of short of authorization to institute the suit.

7. The plaintiff / appellant filed its objections to the application supra. The Trial Court upon hearing the parties to the lis and on consideration of the materials placed on record dismissed the suit, subscribing its reasons at paragraph Nos.7 to 9 which we reproduce as under:

7. **"Point No.1** *It is not in dispute that while considering rejection of plaint the court can look into only plaint averments of the plaintiffs.*

The plaintiff in para-4 of the plaint mentioned that he is represented herein by its Chief Financial officer Mr. S.A. Suresh S/o A.S. Arunachalam also the Principal Officer of the plaintiff company within the meaning of Order 29 Rule 1 CPC. It is not in dispute plaintiff has not produced any authorization letter or board resolution issued by 1TM plaintiff company authorizing him to institute this suit for perpetual injunction against defendants. It is the contention of defendants that suit is not maintainable in view of Sec. 430 of Companies Act, 2013 which reads as under:

"No civil court shall have jurisdiction to entertain any suit or proceedings in respect of matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of the power confirmed by or under this Act or any other law for the time being in force by Tribunal or the Appellate Tribunal."

This provision establishes that any matters in respect of which power has been confirmed on the NCLT the jurisdiction of the civil court is completely barred. NCLT has specifically conferred powers to address grievance, relief to the company which may prejudicial or addressing to any member of the company or for issue of appointment of Directors, the management of the affairs of the company. The plaintiff in this suit sought for the relief of perpetual injunction restraining the defendants or anybody claiming through them jointly and severally, directly or indirectly at any location including online etc., from using in relation to any

products or services connected with the jewellery business in clause 14, 16, 21, 35, 36, 37 and 42, the trademarks C Krishniah Chetty Corp, and others mentioned in the prayer column and for such other reliefs.

8. The learned counsel for plaintiff himself has produced copy of the order of the NCLAT dated 05.01.2022, 12.07.2022 passed in Company Appeal (AT) 65/2019 and CP NO.4/2020 respectively. The relief claimed in this suit and also before NCLT are almost similar. The plaintiff himself filed rejoinder contending that the challenge to the findings of the NCLT is pending before the NCLT amounts to res-judicata. Further, it is not in dispute that plaintiff has filed this suit without authorization issued by 1st plaintiff company. It is the contention of plaintiff that since there is a restriction for holding board meeting question of issuance of resolution at this stage does not arise. However, same cannot be a ground. It is also not in dispute that there exists arbitral clause for resolution of the disputes before arbitral tribunal. The plaintiff in para-53 of his plaint has mentioned that one group of share holders had approached the NCLT by way of an application (54/2018) on the basis of which the NCLT was pleased to restrain the defendants 1 to 3 from competing with the plaintiff in any manner. At para-54 it is mentioned that interim order was extended from time to time until 24.01.2019. At para-55, it is stated that, however, notwithstanding the express statutory prohibition under Sec. 166(5) of the Companies Act which was already recognized and enforced by the NCLT, the defendants have continued their activity and made use of the infringing marks and also continued to make hectic preparation to open a competing business under the infringing marks. In para-56, it is mentioned that the plaintiff is also a party to CP/04/BB/2020 filed by one group of the shareholders against defendants 1 to 3

*before NCLT, interim applications were also moved and heard and orders were reserved by the NCLT, Bengaluru to restrain the defendants 2 and 3 from indulging any Conflicting and competing business. These averments' in the rents in the plaint establishes that matter now sought to be adjudicated by the plaintiffs CFO Sri. S.A. Suresh is already pending consideration before NCLT much belies institution of this suit. Under such circumstances, in view of bar mentioned in Section 430 of the Companies Act, this court has no jurisdiction to entertain this suit and the jurisdiction of this court is completely barred. All these circumstances establishes that suit filed by the plaintiff is hit by the provisions of Sec. 430 of the Companies Act and thereby liable to be rejected under Order VII Rule 11(d) of CPC. Accordingly, I answer Point No.1 in the **Affirmative**.*

9. **Point No.2:** *In view of my finding on point No.1 in the Affirmative, I proceed to pass the following:*

ORDER

Application filed by defendants 1 to 3 under Order VII Rule 11(d) R/w Commercial Courts Act, 1986 seeking to reject the plaint and thereby dismiss the suit filed by the plaintiff is allowed with costs.

Plaint is accordingly rejected on account of suit being barred by the provisions of Sec. 430 of the Companies Act 2013."

8. It is this order passed by the Trial Court which has been questioned in the present appeal along with application seeking condonation of delay of 366 days in preferring the appeal.

9. The appellant in the affidavit filed in support of the application for the condonation of delay, except paragraph Nos.4 to 6, which we have reproduced as under, as the main ground has not stated / explained the delay within the meaning of 'sufficient cause' as per the law laid down by the Hon'ble Apex Court in the case of **GOVERNMENT OF MAHARASTRA (WATER RESOURCES DEPARTMENT) REP. BY THE EXECUTIVE ENGINEER VS. BORSE BROTHERS ENGINEERS AND CONTRUCTION**¹ in preferring the appeal:

4. I state that since the petitioner was awaiting the outcome of I.A. 1075/76 of 2021 in Comp.App. (AT) 65 of 2019 which is the I.A. to withdraw the voluntary undertaking given by the petitioner. However, during the pendency of the same, several actions are being undertaken by the Respondents to the detriment of the petitioner.

5. That, the subsistence of the impugned order will have disastrous consequences for the appellant's business. The perversity of the findings in the impugned order and the complete abdication of the judicial responsibility therein makes it evidence that the learned Trial Court has failed to grasp the issues in the present case and as such continuation of the impugned order without decided the main appeal will inevitably have adverse effects on the appellant's case.

6. That, the appellant will suffer great hardship and irreparable loss and damage if this application is not allowed.

¹ (2021) 6 SCC 460

On the contrary, the respondents will not suffer any loss of damage if this application is allowed."

10. The defendant / respondent Nos.1 to 3 appeared and have filed their statement of objections to the main appeal, as well as to the application seeking for condonation of delay. The respondents in their statement of objections have referred to several proceedings between the parties from the date of filing of the suit till filing of the appeal on the order impugned and taken a specific contention that there is no plausible explanation by the appellant for huge delay beyond the permissible period under the Act of 2015, more specifically in paragraph Nos.4 to 7, which we reproduce as under:

"4. The Appellant cannot be permitted to approbate and reprobate. It is evident that while they claim to have awaited court permission to hold board meetings for authorization, they have, in parallel, purportedly passed a resolution by circulation on 15.12.2024 and 23.12.2024. Respondents No. 2 and 3, being 50% shareholders the Appellant, have already opposed the validity of such a resolution by filing an application for declaration and injunction in L.A. M 8807/2024 in T.A. No. 1/2024 and a contempt petition in Contempt Case (AT) No. 1-3 of 2025. The Hayagrivs yet again passed resolution by circulation on 14.01.2025 authorising one S.A. Suresh to represent it. The Appellant's inconsistent stance exposes their attempt to mislead this Hon'ble Court. It is pertinent to note that if the Appellant believed board authorization was necessary

to contest legal proceedings, then their participation in prior litigations-including WP 12211/2022, WP 2646/2021, CP 4/BB/2020, and COMAP 61/2021-without such authorization is inconsistent with their present stand. Further, assuming the purported resolution by circulation was a valid mode of authorization, the Appellant must explain why they failed to adopt this mechanism earlier instead of using the pendency of I.A. No. 1075-1076 as an excuse for delay. The Appellant's actions demonstrate an attempt to manipulate legal proceedings to suit their convenience. On one hand, they contend that board authorization was a prerequisite for contesting litigation, but on the other, they have engaged in multiple legal battles without such authorization. This contradictory stance exposes the lack of bona fides in their plea for condonation of delay. Copies of the resolution by circular dated 15.12.2024 and 23.12.2024 are attached herewith as ANNEXURE R11 and R12, respectively. Copies of I.A. No. 8807/2024 in T.A. No. 1/2024 and Contempt Case (AT) No. 1-3 of 2025 are attached herewith as ANNEXURE R13 and R14, respectively. Copy of the resolution by circular dated 14.01.2025 is attached herewith as ANNEXURE R15.

5. The finality of the judgment in COMAP No. 61/2021 [2021 SCC OnLine Kar 12513; C. Krishniah Chetty & Sons Pvt. Ltd. v. Deepali Company Private Limited and Others], which held that S.A. Suresh lacked authorization to institute COM OS 306/2020, further negates any purported reliance on resolutions passed subsequently. The Special Leave Petition against this judgment (Diary No. 10605/2023) having been dismissed on 17.01.2025, the Appellant's claim of valid authorization stands nullified.

6. The Appellant has not accounted for the delay on a day-to-day basis, which is a mandatory requirement for condonation

under settled legal principles. The failure to provide specific explanations for each period of delay renders the application legally untenable.

7. In light of the foregoing, it is submitted that the Appellant has failed to demonstrate sufficient cause for condonation of delay under Section 5 of the Limitation Act, 1963. The plea taken is vague, lacks bonafides, and seeks to abuse the process of this Hon'ble Court."

11. Heard Sri.Mandeep Karla, learned counsel for Sri.Hitesh Gowda B.J., learned counsel for the appellant, Sri.Arun Kumar, learned Senior Counsel appearing for Ms.Krutika Raghavan, learned counsel for the caveators / respondent Nos.1, 2 and 3 and Sri.Deepak Bhaskar, learned counsel for respondent No.5.

12. Sri.Mandeep Karla, learned counsel appearing for the appellant reiterating the grounds urged in the affidavit in support of the application submitted that in view of the pendency of the application bearing Nos.1075-1076/2021 in Company Appeal (AT) No.65/2019 before NCLAT seeking permission to the appellant to convene and hold board meetings, the appeal could not be filed within the permissible time provided under Section-13 of the Act of 2015. He has further stated that, the appellant herein preferred a Special Leave Petition before the Hon'ble Apex Court against the order passed by the Co-ordinate Bench of this Court in Commercial

Appeal No.61/2021 in SLP Civil Diary No.10605/2023 on 13.03.2023. The said petition came to be dismissed as infructuous with observations, which we reproduce under:

"UPON hearing the counsel, the Court made the following

ORDER

We are informed that the civil suit has been dismissed and an appeal has been preferred by the petitioner, C. Krishniah Chetty and Sons Private Limited, which is pending before the High Court.

In view of the aforesaid position, the present special leave petition has become infructuous and, therefore, we are not going into the question(s) of law.

It will be open to the parties to raise all pleas and contentions before the High Court in accordance with law. In case of an adverse decision, it would be open to the petitioner, C. Krishniah Chetty and Sons Private Limited, and/or the respondents to raise the question(s), which is/are left open before this Court."

13. With this, the learned counsel for the appellant submitted that the delay caused is neither intentional nor deliberate, but for the bonafide reasons stated in the affidavit in support of the application and seeks condonation of delay of 366 days in filing the appeal.

14. Refuting the submissions, Sri.Arun Kumar, learned Senior Counsel appearing for respondent Nos.1 to 3 submits that the explanation offered by way of submission by the learned counsel for the appellant is not so simple to be accepted as a valid explanation. The delay caused is intentional, deliberate and falls short of plausible explanation to bring the same within the parameters of 'sufficient cause' in line with the provisions of Act of 2015. He stressed on the materials placed along with the objections to contend that the case of the appellant that they could not prefer appeal in time because of lack of resolution and awaiting NCLAT permission to hold meetings, is a misconceived submission as there were several proceedings initiated between the parties such as W.P.No.12211/2022, W.P.No.2646/2021, C.P.No.4/BB/2020 and COMAP No.61/2021, without there being any resolution or a valid mode of authorization. He also submitted that the action of the appellant demonstrate an attempt to manipulate the legal proceedings to suit their convenience. This contradictory stance exposes the lack of bonafides in the plea for condonation of delay and it borders negligence as such the, application need to be dismissed.

15. Sri.Deepak Bhaskar, learned counsel for respondent No.5 argues on the same lines, stating that there is an inordinate delay in

filing the appeal and in view of the law declared by the Hon'ble Apex Court as well as this Court, the application requires to be dismissed.

16. Upon hearing the learned counsel for the parties, the only question which fall for consideration before us is:

Whether the appellant has properly explained the inordinate delay of 366 days in filing the present appeal, which depict 'sufficient cause', as held by the Hon'ble Apex Court in the case of **BORSE BROTHERS** referred supra?

17. Before dwelling upon the submissions made by the counsel for the parties, and also the materials placed on record, it is apposite to look into the object of Act of 2015. Act of 2015 has been enacted with an avowed object to ensure that there is no unnecessary delay in disposal of commercial disputes. The Legislature, in its wisdom incorporated rigour provisions to give effect to the object of the Act, i.e., for speedy disposal of Commercial Suit / Dispute. As such, the strict procedure provided in terms of the Act of 2015, the timeline specified therein, are mandatory in nature and bound to be followed by the litigant. Failing to comply with the statutory timelines and strict procedure would result in adverse order on account of lack of

bonafide/bordering negligence on the party seeking relief at the hands of the Court.

18. The Hon'ble Apex Court in the case of **BORSE BROTHERS** referred supra has made observations to the effect that the approach of the Court for condoning the delay in matters involving commercial disputes under the Commercial Courts Act, 2015, should not be unduly elastic. The relevant portions are stated in paragraph Nos.58 and 63 which we reproduce as under:

"58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in Basawaraj v. LAO [Basawaraj v. LAO, (2013) 14 SCC 81] , has held : (SCC pp. 85-88, paras 9-15)

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious

man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land & Building Corpn. v. Bhutnath Banerjee [Manindra Land & Building Corpn. v. Bhutnath Banerjee, AIR 1964 SC 1336] , Mata Din v. A. Narayanan [Mata Din v. A. Narayanan, (1969) 2 SCC 770] , Parimal v. Veena [Parimal v. Veena, (2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24] .)

10. In Arjun Singh v. Mohindra Kumar [Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993] this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any

difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only [Ed. : The matter between two asterisks has been emphasised in original.] so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned [Ed. : The matter between two asterisks has been emphasised in original.] , whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [Madanlal v. Shyamlal, (2002) 1 SCC 535] and Ram Nath Sao v. Gobardhan Sao [Ram Nath Sao v. Gobardhan Sao, (2002) 3 SCC 195] .)

*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.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, Para 605 p. 266:

'605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.'

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat & Kotecha Property v. SBI Staff Assn. [Popat & Kotecha Property v. SBI Staff Assn., (2005) 7 SCC 510]

, *Rajender Singh v. Santa Singh* [*Rajender Singh v. Santa Singh*, (1973) 2 SCC 705] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [*Pundlik Jalam Patil v. Jalgaon Medium Project*, (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

14. In *P. Ramachandra Rao v. State of Karnataka* [*P. Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578 : 2002 SCC (Cri) 830] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [*Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225 : 1992 SCC (Cri) 93] .

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.”

(emphasis supplied)

63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or latches.”

19. The Division Bench of the Delhi High Court in RFA (COMM) No.231/2023 and CM Appeal No.53957/2023, in the case of **M/S. MAYA RAM KRISHAN LAL JAIN vs. M/S. SHRI BISHAN DASS TRADERS AND OTHERS**, following the judgment of the Hon'ble Apex Court supra dismissed, the application seeking to condone the delay of 130 days in filing the appeal beyond the permissible period holding that the expression “sufficient cause” is not elastic enough to cover inordinate unexplained delay.

20. The Hon'ble Apex Court in a recent judgment dated 15.04.2025, in Special Leave to Appeal Civil (C) No.9580/2025 in the case of **JHARKHAND URJA UTPADAN NIGAM LIMITED AND ANOTHER VS. M/S. BHARAT HEAVY ELECTRICALS LIMITED**, upholding the order passed by the High Court of Jharkhand at Ranchi, in dismissing the application seeking condonation of delay of 301 days, dismissed the appeal by stating in paragraph Nos.16 to 18, which we reproduce as under:

"16. In the present case we find that after the order in question came to be pronounced by the Commercial Court, Ranchi, the appellants herein during the limitation period did not bother to even inquire as to why the said order was not available. It was only eight-months after the pronouncement of the said order and almost 150-days after the expiry of the limitation period, that the realization suddenly dawned upon the appellants herein to apply for the certified copy.

17. One of the avowed objects of the provisions of the Commercial Courts Act read with amended provisions of CPC applicable to the Commercial Courts is to ensure that there is no unnecessary delay in disposal of the commercial suit. Once specific time lines are fixed and there is a strict procedure provided in terms of the Commercial Courts Act, parties are by the statute put to notice that they have to very carefully contest the suits filed as commercial suits and that failing to comply with statutory timelines and a strict procedure, certain adverse consequences may flow on account of lack of application by a contesting party.

18. Thus, merely because Order XX Rule I enjoins a duty upon the commercial courts to provide the copies of the judgment that does not mean that the parties can shirk away all responsibility of endeavoring to procure the certified copies thereof in their own capacity. Any such interpretation would result in frustrating the very fundamental cannons of law of limitation and the salutary purpose of the Act, 2015 of ensuring timely disposals.”

21. Coming to the case on hand, the suit was filed in the year 2020. The application filed seeking temporary injunction came to be dismissed on 20.02.2021. Against which, an appeal in Com.Appeal No.61/2021 was preferred and dismissed on 27.05.2021. The main suit came to be dismissed on the application filed by the defendant / respondent Nos.1 to 3 under Order-VII, Rule-11(d) of CPC, read with Act of 2015 on 17.02.2022. As could be gathered from the records a SLP (C) Diary No.10605/2023 calling in question the order passed by a Co-ordinate Bench of this Court in Com Appeal No.61/2021 was filed on 13.03.2023, i.e., nearly after one year, one month from the date of dismissal of suit. The present appeal is filed on 19.04.2023 i.e., after one year, two months from the date of dismissal of the suit. In the interregnum, there are several proceedings, initiated by the appellant against the respondent herein and the same are forth coming from the records. What is more appealing to us is the stand of the respondent Nos.1

to 3 in their statement of objections to the application for condonation of delay, which we have already reproduced above, especially the following:

"It is pertinent to note that if the Appellant believed board authorization was necessary to contest legal proceedings, then their participation in prior litigations – including W.P.No.12211/2022, W.P.No.2646/2021, C.P.No.4/BB/2020 and COMAP No.61/2021, without such authorization is inconsistent with their present stand. Further, assuming the purported resolution by circulation was a valid mode of authorization, the Appellant must explain why they failed to adopt this mechanism earlier instead of using the pendency of I.A.Nos.1075-1076 as an excuse for delay."

(emphasis supplied)

22. The explanation offered by the appellant that it was awaiting for the outcome of the Application Nos.1075-1076 of 2021 in the proceedings instituted before the NCLAT, is only a ploy, to overcome the delay of 366 days. Surely, the conduct of the appellant lacks bonafides and the same borders negligence, as has been observed by the Hon'ble Apex Court in the judgment of **BORSE BROTHERS** supra.

23. There is nothing to suggest that the Hon'ble Apex Court in the SLP supra said anything regarding the delay in preferring the

appeal. In fact all the contentions of the parties were left open. In that view of the matter, the arguments of learned counsel for the appellant seeking condonation of delay on the premise that the appellant was awaiting the decision on the Application Nos.1075-1076/2021 is clearly misplaced.

24. As could be seen from the record, that the suit came to be dismissed on 17.02.2022, there is nothing on record to show that the appellant at an earlier point of time shown its eagerness to apply for the certified copy at least within the time limit prescribed. The same was applied after the filing of the appeal. Further as could be gathered from the records, the appeal filed after one year, two months from the date of dismissal of the suit and 10 months after the time limit of 60+60 days i.e., total 120 days. The explanation offered is very bald and vague as there are several other proceedings initiated by the appellant presumably with the resolution by way of circulation as a valid mode of authorization. The same could have been adopted in the suit. The unexplained delay and the conduct in instituting appeal after 1 year, 3 months before the Hon'ble Apex court challenging the orders passed on an interlocutory order and the filing appeal before this Court after delay of 1 year, 2 months from the date of dismissal of suit clearly

postulates that the appellant is barred seeking any equity under the hands of this Court.

25. It is a trite law that strict compliance of the provisions of Act of 2015 with respect to statutory timeline prescribed in consonance with the object of the Act, is mandatory, any short fall would reflect in adverse orders to a party/litigant who is not vigilant about his right. That apart, the words 'sufficient cause' used under Section-5 of Limitation Act should not be unduly elastic in terms of stringent provisions of the Act of 2015, so far as the statutory timeline fixed.

26. In view of the law declared by the Hon'ble Apex Court supra, we find no merits in the application seeking condonation of inordinate delay of 366 days in filing the present appeal. In view of the reasons stated supra, we answer the question raised above in 'negative' and against the appellant. Accordingly, we proceed to pass the following:

ORDER

- i. Application in I.A. No.1/2023 filed seeking to condone inordinate delay of 366 days in filing the appeal is dismissed.

- ii. In view of dismissal of the application for condonation of delay, the appeal does not survive for consideration and accordingly, the same is also dismissed.
- iii. All pending application(s) also stands disposed off.
- iv. No order as to costs.

**Sd/-
(V KAMESWAR RAO)
ACTING CHIEF JUSTICE**

**Sd/-
(T.M.NADAF)
JUDGE**

JJ
CT: BRS