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(2012) 07 DEL CK 0356

Delhi High Court

Case No: Criminal L.P. No. 599 and 601 of 2011

Telestra Trade Place Pvt. Ltd.	APPELLANT
Vs	
Jagdambay Builders Pvt. Ltd. Polar Security and Finance Pvt. Ltd. Vs Sanjeev Channa	RESPONDENT

Date of Decision: July 11, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 82
- Limitation Act, 1963 - Section 5
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: V.K. Shali, J

Bench: Single Bench

Advocate: Ashutosh Dubey, for the Appellant;

Final Decision: Dismissed

Judgement

V.K. Shali, J.

Crl. M.A. No. 19792/2011 (for delay) in Crl. L.P. No. 599/2011

Crl. M.A. No. 19809/2011 (for delay) in Crl. L.P. No. 600/2011

Crl. M.A. No. 19811/2011 (for delay) in Crl. L.P. No. 601/2011

1. The aforesaid three leave to appeal petitions are filed against the impugned order dated 3.11.2010 and 15.2.2011 by virtue of which the learned trial court had dismissed the complaint of the petitioner/complainant in default on account of non-appearance of the complainant and also for non-prosecution. Briefly stated the facts of the case are that the petitioner/complainant is claiming itself to be a company registered under Companies Act, 1956 and one Pramod Mishra was appointed as an authorized representative to file the complaint vide Resolution dated 29.5.2009. On account of three separate cheques having been dishonoured,

which were purportedly issued by the respondents, three separate complaints were filed. These cheques were for an amount of Rs.29 lacs, Rs.12 lacs and Rs.36 lacs. It was alleged in the complaint that these cheques were issued by the respondent-company to the petitioner/complainant in discharge of its legal liability but as they were dishonoured, after compliance with the statutory provision of serving a demand notice, action by way of three complaints was initiated. All these three complaints have been dismissed vide impugned order.

2. The present three leave to appeal petitions have been filed along with application u/s 5 of the Limitation Act seeking condonation of 345 days'' delay in filing the Criminal L.P. Nos.599 and 600 of 2011 and 240 days'' delay in filing the Criminal L.P. No.601 of 2011. The reasons given for the delay in filing the leave to appeal, as stated in the application, are that in the month of April, 2011, there arose some dispute between the authorized representative and the company as a consequence of which, the authorized representative left the company and he did not inform the status of the cases. The petitioner/complainant appointed a new authorized representative, who appeared in some other case than these three cases against the accused persons in Dwarka courts on 1.12.2011. The accused is alleged to have filed an application seeking cancellation of the proclamation purported to have been issued against him u/s 82 Cr.P.C. where allegedly the accused/respondent purportedly made a wrong statement that the three other cases have been compromised with the petitioner. It is stated that this was a wrong statement and upon checking, it was found that these three complaints, in respect of which the present leave to appeal petitions have been filed, were actually dismissed for non-prosecution. It is stated that this was the reason that there was a delay in filing the leave to appeal petitions.

3. I have considered the submissions made by the Learned Counsel and have gone through the record and the applications seeking condonation of delay. There is no dispute about the fact that law regarding condonation of delay in filing the appeal has been diluted by the Hon''ble Supreme Court with the passage of time starting from the case of Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd. 1962 SCR (3) 762 to the latest trend so as to hold that each day''s delay is not to be explained by the party seeking condonation of delay but he has to give some cogent, convincing and pragmatic reasons for non-appearance and further the bona fides of the party have to be seen. It has also been held that quantum of delay may not be relevant in such cases.

4. Keeping in view these broad parameters, a pragmatic approach has to be taken. In the instant case, the bona fides of the explanation given by the petitioner/complainant itself seems to be suspicious. The complaints have been admittedly dismissed on 3.11.2010 and 15.2.2011 by the learned Magistrate despite keeping it pending till 4 p.m. when nobody cared to appear. The petitioner/complainant says that dispute between the company and the authorized

representative arose only in the month of April, 2011. If that be so, it could well be presumed that the authorized representative himself had recorded the date as 3.11.2010 correctly or he would have checked the date immediately thereafter, which does not seem to have been done.

5. In addition to this, the petitioner- company cannot thrust everything on to authorized representative. The authorized representative was appointed only for the purpose of filing the complaint and following it up. It was essentially for the Secretary of the company or the legal department or the Managing Director to have obtained the report regarding the progress of the complaint cases filed by them. It is unacceptable and unbelievable that after appointing the authorized representative, the company is not interested to find out as to what has happened to its cases. If it does not do so, then obviously it is grossly negligent which cannot be said to be constituting sufficient cause. Further, the explanation which has been given by the petitioner/complainant is that they learnt about the dismissal of the complaint only through another case between them and the accused, where the accused approached Dwarka District Court for cancellation of proclamation. It is very strange that a company which is filing cases u/s 138 of Negotiable Instruments Act and that too of huge amount of Rs.29 lacs, 12 lacs and so, would not follow it up and if they do not do it, they do so at their own peril. It has been noticed in Delhi courts that there are nearly seven lacs cases as on date which are pending adjudication in the courts of Magistrates. This is only on account of the fact that the companies like the petitioner''s company, after filing the complaints, feel their job has been done and do not follow it up effectively, as a consequence of which, every day pendency of these cases keeps on piling up.

6. Keeping in view the aforesaid facts, I feel that in the instant case also, the petitioner/complainant, after filing of the complaint against the respondent had been grossly negligent in not following it up timely and if they were so, it cannot be said to be constituting a sufficient cause which can be condoned. Accordingly, I feel that in these leave to appeal petitions, the petitioners have not been able to show ''sufficient cause'' for condonation of delay. Accordingly the applications seeking condonation of delay are dismissed. Since the applications for condonation of delay itself has been dismissed, therefore, leave to appeal petitions also stands dismissed.