



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

**CIVIL APPLICATION (O) No. 705 of 2023 in
COMMERCIAL APPEAL STAMP NO.21998 OF 2022**

CEAT Limited

vs.

Viren Mishra,

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S. P. Bodalkar, Advocate for applicant/appellant

Shri A.C.Dharmadhikari, Advocate for non-applicant/respondent

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 19th JUNE, 2024

Heard.

2. The applicant is the original plaintiff whose commercial suit being No.22/2017 came to be dismissed vide judgment and order dated 06.05.2022 passed by the District Judge-2, Nagpur. The suit pertains to the recovery of amount of Rs.1,70,16,342/-.

3. The original defendant has preferred counter claim and the same was also dismissed. As a sequel thereof, the defendant has preferred Commercial Appeal No. 13 of 2022 under Section 13 of the Commercial Courts Act, 2015 (for short, the Act of 2015).

4. As far as appeal preferred by the original plaintiff-the applicant herein is concerned, there appears delay of 156 days which is sought to be justified on the ground of voluminous record, time consumed in comprehending the order and judgment from such voluminous record, the resignation of the then Law Officer, who was handling the case, etc.

5. Mr. Dharmadhikari, learned counsel appearing for the original defendant-non-applicant herein would oppose the prayer on the ground that Section 13 of the Act of 2015 does not confer express power to condone the delay.

6. As against above, Mr. Bodalkar, learned counsel appearing for the original plaintiff-applicant herein submits that in such an eventuality, the Court is required to take recourse to the provisions of the Limitation Act, 1963 (for short, the Act of 1963). He would draw support from the provisions of Section 29 of the Act of 1963. He would urge that in absence of powers to condone the delay under the principal statute i.e. the Commercial Courts Act, particularly Section 13, and there being absence of embargo to apply the provisions of the Act of 1963, the provisions of Sections 4 to 24 of the Act of 1963 shall apply to the case in hand. That being so, the Court has every power to condone the delay. He would also draw support from the judgment of the Kerala High Court in the case of *Muhammedshafeek vs. M/s. Tasty Nut Industries and three others*, decided on 17.10.2023.

7. We have appreciated the rival claims.

8. The Law of Limitation is enshrined in the legal maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). The Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time (*Brijesh Kumar Versus State of Haryana*, [(2014) 11 SCC 351]. In view of the provisions of Section 29 of the Act of 1963, it has to be inferred upon plain reading of the provisions of Section 13 of the Act of 2015 the power to condone delay can be exercised even in absence of express provision to that effect in the Act of 1963. Section 5 of the Act of 1963 can be invoked and applied to condone the delay under the Act of 2015. The same view has been elucidated by the Coordinate Bench of this Court in the case of *Kalpesh R. Jain and Others Versus Mandev Tubes Private Limited* [2017 SCC OnLine Bom 8882], paragraphs 25 and 32 of the said case read as under:

“ 25. We do not see as to how when there are pre-existing courts which were already dealing with the

suits and appeals pertaining to commercial disputes in their ordinary original civil jurisdiction or their appellate jurisdiction and not ruling out the applicability of section 5 of the Limitation Act, 1963, the appeals arising out of such suits, then, the Act 4 of 2016 intended to exclude section 5 of the Limitation Act, 1963. That would mean a pre-existing Appellate Court like the High Court whether on its appellate side or its Commercial Appellate Division is helpless and cannot entertain an appeal merely because it is filed beyond the period of limitation prescribed by sub-section (1) of section 13 of the Act 4 of 2016. Pertinently, it being an appeal, it is open to the appellant to point out that there was sufficient cause which prevented him from filing the appeal within the prescribed period and by invoking section 5 of the Limitation Act, the said delay be condoned.

34. As a result of the above discussion, we hold that section 5 of the Limitation Act, 1963, can be invoked and applied in requesting the Commercial Appellate Court set up under the Act 4 of 2016 to condone the delay beyond the period of sixty days in presenting/filing it, provided there is a sufficient cause for the same.”

9. Even the decision of the Hon’ble Apex Court in the case of *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Versus Borse Brothers Engineers and Contractors Private Limited [(2021) 6 SCC 460]*, is relevant wherein the identical view has been taken that Section 5 of the Act of 1963 is not excluded from the scheme of the Act of 2015. The judgment of Apex Court in *Consolidated Engg. Versus Irrigation Department, [(2008) 7 SCC 169]*, has been referred in the above decision wherein paragraph 43 describes the object of Section 29(2), which reads as under:

“43. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in

regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event, the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.”

10. In the backdrop of position of law as settled in above judgment, we are unable to accept the objection raised by the counsel appearing for the non-applicant herein. Sub-section (2) of Section 29 of the Act of 1963 prompts that provisions of Section 4 to 24 (both inclusive) shall be attracted, if in the principal statute i.e. Commercial Courts Act the powers about applicability of the Limitation Act is not prescribed.

11. In such an eventuality, we overrule the objection raised by the counsel appearing for the non-applicant-original defendant.

12. As far as the cause in support of the prayer for condonation of delay is concerned, we are convinced that sufficient cause is disclosed, however we are of the view that the order of condonation of delay must follow with the incidental order of payment of costs.

13. There is one more ground based on which this Court is inclined to condone the delay viz. the original defendant has also preferred Commercial Appeal against the very same judgment. As such, it can be inferred that both the parties are aggrieved with the judgment delivered in Commercial Suit.

14. That being so to offer fair opportunity of hearing, we deem it appropriate to condone the delay. We direct the original plaintiff-applicant herein to pay costs of Rs.10,000/- to the original defendant-non-applicant herein within four weeks from today.

15. Mr. Dharmadhikari in response to the Court's query submits that he can accept the costs on behalf of his client. The costs be paid within a period of four weeks from today and acknowledgment to that effect be produced on record.

Commercial Appeal (St) No. 21998/2022 and Commercial Appeal No. 13/2022

Having regard to the mandate provided under Section 14 of the Commercial Courts Act, 2015 which prompts an appeal be decided expeditiously, we post hearing of these appeals on 19.07.2024.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.