

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70212 of 2016

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-0089-15-16 dated 29/09/2015 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II)

M/s Hello Mineral Water (P) Ltd.
(K-51, Green Park, Main New Delhi-110016)
VERSUS

.....Appellant

Commissioner of Central Excise, Noida
(C-56/42, Sector-62, Noida, U.P.)

....Respondent

APPEARANCE:

Absent on Call, for the Appellant

Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70086/2023

DATE OF HEARING : 22 September, 2023

DATE OF DECISION : 22 September, 2023

SANJIV SRIVASTAVA:

Vide Final order No.72187/2018 dated 13.09.2018 this appeal was dismissed by the Bench observing as follows:-

"2. I also find that the matter has been repeatedly coming up on Board and the appellant was unrepresented on all the dates. It seems that the appellant is not interested in pursuing the appeal. Accordingly, the same is dismissed for non-prosecution with liberty to the appellant to apply for restoration on sufficient cause being shown for non-appearance."

2. Subsequently while Miscellaneous Application Order No.70079/2020 dated 18.02.2020 this appeal was restored observing as follows:-

"Nobody is present. The prayer in the Miscellaneous Application is for restoration of the appeal dismissed for non-prosecution by Final Order No.72187/2018 dated 13.09.2018. It stands mentioned in the application that the hearing notice was received by the appellant on 12.09.2018, fixing the date of hearing as on 13.09.2018 and as such it was not possible for the appellant to honour the date of hearing.

2. In view of the foregoing explanation I recall the final order, allow the ROM Application and restore the appeal to its original number. The appeal shall be listed for final disposal in due course."

3. The matter was listed for hearing on 18.07.2023 when again the appellant chose not to appear. However in the interest of justice matter was adjourned for today i.e. 22.09.2023 while adjourning Bench observed as follows:-

"None appeared on behalf of the appellant, the hearing of the appeal is adjourned in the interest of justice. List on 22/09/2023. Issue notice to the appellant."

4. Notice for hearing was issued to the appellant and the counsel on record in the matter from that tracking receipt of the speed post it is observed that the notice was delivered on 31.07.2023 to the counsel on record and the copy of notice sent to the applicant was received back undelivered.

5. The above confirms that appellant counsel have received the notice for hearing. However he has not shown any interest in pursuing this matter. From the facts as noted as above it is observed that the matter is pending only for the reason that appellant/counsel on record is not responding to the notices for hearing issued making it evident that they are not interested in prosecuting this matter any further. Having allowed a sufficient number of opportunities to the appellant/appellant's counsel for hearing, I do not find any reason to further adjourn this matter.

6. Even Section 35C (1A) of the Central Excise Act, 1944 provides as follows:-

"35C. Orders of Appellate Tribunal.-

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal."

RULE 20 of CESTAT Procedure Rules, 1982 provided as follows:-

Action on appeal for appellant's default. — Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal.

7. Interestingly in this case this appeal filed by the appellant was earlier also dismissed for non prosecution. Subsequently it was restored by the bench on application made by the appellant. However it is observed that that appellant chose not appear even at the time of hearing of the miscellaneous application also appellant was not represented and restoration was done in absentia. Even after restoration appellant has not shown any interest towards prosecuting this appeal. Even in response to the hearing notice no communication has been made by the appellant/ appellant's counsel.

8. In case of Ishwarlal Mali Rathod [Order dated September 20, 2021 in Special Leave Petition (Civil) Nos.14117-14118 of 2021] condemning the practice of adjournments sought mechanically and allowed by the courts/ Tribunal's Hon'ble Supreme Court has observed as follows:-

"1. *Present is the classic example of misuse of the adjournments granted by the court. Present SLPs have been preferred challenging the impugned order dated 17.02.2021 passed by the High Court of Madhya Pradesh, Bench at Indore in M.P. No.107 of 2021 and M.P. No.108 of 2021 by which the High Court has dismissed the said misc. petition preferred by the petitioner – original defendant, confirming the order passed by the learned Trial Court dated 21.12.2020 closing the right to cross-examine the plaintiff's witness.*

...

4. *As observed hereinabove, present is a classic example of misuse of adjournments granted by the court. It is to be noted that the respondents herein – original plaintiffs filed the suit for eviction, arrears of rent and mesne profit as far as back in the year 2013. That thereafter despite the repeated adjournments sought and granted by the court and even twice the adjournments were granted as a last opportunity and even the cost was imposed, the defendant failed to cross examine the plaintiff's witness. Although the adequate liberty was given to the defendant to cross examine the plaintiff's witness, they never availed of the same and went on delaying the proceedings by repeated prayers of adjournment and unfortunately the Trial Court and even subsequently the High Court continued to grant adjournment after adjournment and as such contributed the delay in disposal of the suit which as such was for eviction. Such approach is wholly condemnable. Law and professional ethics do not permit such practice. Repeated adjournments on one or the other pretext and adopting the dilatory tactics is an insult to justice and concept of speedy disposal of cases. Petitioner – defendant acted*

in a manner to cause colossal insult to justice and to concept of speedy disposal of civil litigation.

5. Grant of repeated adjournments in routine manner and how it affects ultimately the justice delivery system as such came to be considered by this court in catena of decisions and asking/grant of repeated adjournments have been repeatedly condemned by this court.

5.1 In the case of Shiv Cotex v. Tirgun Auto Plast (P) Ltd. (2011) 9 SCC 678, it is observed and held in paragraphs 14 to 17 as under:-

"14. ... Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?

15. It is sad, but true, that the litigants seek—and the courts grant—adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

16. No litigant has a right to abuse the procedure provided in CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system.

17.... A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit—whether the plaintiff or the defendant—must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril.”

5.2 Commenting on the delay in the justice-delivery system, although in respect of the criminal trial, Krishna Iyer, J. in the case of *Babu Singh v. State of U.P.* (1978) 1 SCC 579 has observed in paragraph 4 as under:-

“4. ... Our justice system, even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial', whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings.”

5.3 In the case of *Noor Mohammed v. Jethanand and Anr.* (2013) 5 SCC 202, using very harsh words and condemning the repeated adjournments sought by the lawyers and granted by the courts, this court has observed in paragraph 1, 12, 13, 27 and 28 as under:-

“1. In a democratic body polity which is governed by a written Constitution and where the Rule of Law is paramount, the judiciary is regarded as sentinel on the qui vive not only to protect the fundamental rights of the citizens but also to see that the democratic values as enshrined in the Constitution are respected and the faith and hope of the

people in the constitutional system are not atrophied. Sacrosanctity of the Rule of Law neither recognises a master and a slave nor does it conceive of a ruler and a subject but, in quintessentiality, encapsules and sings in glory of the values of liberty, equality and justice in accordance with law requiring the present generation to have the responsibility to sustain them with all fairness for the posterity ostracising all affectations. To maintain the sacredness of democracy, sacrifice in continuum by every member of the collective is a categorical imperative. The fundamental conception of democracy can only be preserved as a colossal and priceless treasure where virtue and values of justice rule supreme and intellectual anaemia is kept at bay by constant patience, consistent perseverance, and arguseyed vigilance. The foundation of justice, apart from other things, rests on the speedy delineation of the *lis pendens* in courts. It would not be an exaggeration to state that it is the primary morality of justice and ethical fulcrum of the judiciary. Its profundity lies in not allowing anything to cripple the same or to do any act which would freeze it or make it suffer from impotency. Delayed delineation of a controversy in a court of law creates a dent in the normative dispensation of justice and in the ultimate eventuate, the Bench and the Bar gradually lose their reverence, for the sense of divinity and nobility really flows from the institutional serviceability. Therefore, historically, emphasis has been laid on individual institutionalism and collective institutionalism of an adjudicator while administering justice. It can be stated without any fear of contradiction that the collective collegiality can never be regarded as an alien concept to speedy dispensation of justice. That is the hallmark of duty, and that is the real measure.

12. *The proceedings in the second appeal before the High Court, if we allow ourselves to say so, epitomises the corrosive effect that adjournments can have on a litigation and how a lis can get entangled in the tentacles of an octopus. The philosophy of justice, the role of a lawyer and the court, the obligation of a litigant and all legislative commands, the nobility of the Bench and the Bar, the ability and efficiency of all concerned and ultimately the divinity of law are likely to make way for apathy and indifference when delay of the present nature takes place, for procrastination on the part of anyone destroys the values of life and creates a catastrophic turbulence in the sanctity of law. The virtues of adjudication cannot be allowed to be paralysed by adjournments and non-demonstration of due diligence to deal with the matter. One cannot be oblivious to the feeling necessities of the time. No one can afford to sit in an ivory tower. Neither a Judge nor a lawyer can ignore "the total push and pressure of the cosmos". It is devastating to expect infinite patience. Change of attitude is the warrant and command of the day. We may recall with profit what Justice Cardozo had said: "It is true, I think, today in every department of the law that the social value of a rule has become a test of growing power and importance." [Benjamin N. Cardozo, *The Nature of Judicial Process* (Cosimo Inc., 2009) 73]*

13. *It has to be kept in mind that the time of leisure has to be given a decent burial. The sooner it takes place, the better it is. It is the obligation of the present generation to march with the time and remind oneself every moment that the rule of law is the centripodal concern and delay in delineation and disposal of cases injects an artificial virus and becomes a vitiating element. The unfortunate characteristics of endemic delays have to be avoided at any cost. One has to bear in mind that this is the day, this is the hour and this is the moment, when all soldiers of law*

fight from the path. One has to remind oneself of the great saying, "Awake, Arise, 'O' Partha".

27. The anguish expressed in the past and the role ascribed to the Judges, the lawyers and the litigants is a matter of perpetual concern and the same has to be reflected upon every moment. An attitude of indifference can neither be appreciated nor tolerated. Therefore, the serviceability of the institution gains significance. That is the command of the Majesty of Law and none should make any maladroitness effort to create a concavity in the same. Procrastination, whether at the individual or institutional level, is a systemic disorder. Its corrosive effect and impact is like a disorderly state of the physical frame of a man suffering from an incurable and fast progressive malignancy. Delay either by the functionaries of the court or the members of the Bar significantly exhibits indolence and one can aphoristically say, borrowing a line from Southwell "creeping snails have the weakest force" [Robert Southwell, "Loss in Delay", in William B. Turnbull (Ed.), The Poetical Works of the Rev. Robert Southwell (John Russell Smith, London 1856), p. 60.] . Slightly more than five decades back, talking about the responsibility of the lawyers, Nizer Louis had put thus: "I consider it a lawyer's task to bring calm and confidence to the distressed client. Almost everyone who comes to a law office is emotionally affected by a problem. It is only a matter of degree and of the client's inner resources to withstand the pressure." [Nizer Louis, My Life in Court (Doubleday & Co. Inc., New York 1961), p. 213]

A few lines from the illustrious Justice Frankfurter is fruitful to recapitulate:

"I think a person who throughout his life is nothing but a practising lawyer fulfils a very great and essential function in the life of society. Think of the responsibilities on the one hand, and the satisfaction on the

other, to be a lawyer in the true sense.” [Felix Frankfurter, “Proceedings in Honor of Mr. Justice Frankfurter and Distinguished Alumni, Occasional Pamphlet No. 3” (Harvard Law School, Cambridge, 1960), pp. 4-5]

28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.”

5.4 In the aforesaid decision, this court also considered the role of advocate in the justice delivery system and considered the earlier decisions in paragraphs 17 to 22 which read as under:-

“17. In Ramon Services (P) Ltd. v. Subhash Kapoor [(2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152 : AIR 2001 SC 207] , after referring to a passage from Mahabir Prasad Singh v. Jacks Aviation (P) Ltd. [(1999) 1 SCC 37 : AIR 1999 SC 287] , the Court cautioned thus : (Ramon Services case [(2001) 1 SCC 118 : 2001 SCC (Cri)

3 : 2001 SCC (L&S) 152 : AIR 2001 SC 207] , SCC p. 126, para 15)

"15. ... Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's nonappearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability."

Be it noted, though the said passage was stated in the context of strike by the lawyers, yet it has its accent on non-appearance by a counsel in the court.

18. In this context, we may refer to the pronouncement in Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra [(1984) 2 SCC 556 : 1984 SCC (Cri) 335] , wherein the Court observed that : (SCC p. 563, para 9)

"9. ... An advocate stands in a loco parentis towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need."

19. In Lt. Col. S.J. Chaudhary v. State (Delhi Admn.) [(1984) 1 SCC 722 : 1984 SCC (Cri) 163 : AIR 1984 SC

618] , a three-Judge Bench, while dealing with the role of an advocate in a criminal trial, has observed as follows : (SCC pp. 723-24, para 3)

"3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his advocate is finding it difficult to attend the court from day to day. It is the duty of every advocate, who accepts the brief in a criminal case to attend the trial from day to day. We cannot over-stress the duty of the advocate to attend to the trial from day to day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend."

20. In *Mahabir Prasad Singh* [(1999) 1 SCC 37 : AIR 1999 SC 287], the Bench, laying emphasis on the obligation of a lawyer in his duty towards the Court and the duty of the Court to the Bar, has ruled as under: (SCC p. 44, paras 17-18)

"17. ... 'A lawyer is under obligation to do nothing that shall detract from the dignity of the court of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.' [Warevelle's Legal Ethics, p. 182]

18. Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court

and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court."

21. While recapitulating the duties of a lawyer towards the court and society, being a member of the legal profession, this Court in O.P. Sharma v. High Court of P&H [(2011) 6 SCC 86 : (2011) 3 SCC (Civ) 218 : (2011) 2 SCC (Cri) 821 : (2011) 2 SCC (L&S) 11] has observed that : (SCC p. 92, para 17)

"17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law."

The Bench emphasised on the role of eminent lawyers in the framing of the Constitution. The emphasis was also laid on the concept that lawyers are the officers of the court in the administration of justice.

22. In R.K. Garg v. State of H.P. [(1981) 3 SCC 166 : 1981 SCC (Cri) 663] , Chandrachud, C.J., speaking for the Court pertaining to the relationship between the Bench and the Bar, opined thus : (SCC p. 170, para 9)

"9. ... the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an illtuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate

destruction of a system without which no democracy can survive."

5.5 Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a times, the task of adjournments is used to kill Justice. Repeated adjournments break the back of the litigants. The courts are enjoying upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of the justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligence and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom Courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants. Take an example of the present case. Suit was for eviction. Many a times the suits are filed for eviction on the ground of bonafide requirements of the landlord. If plaintiff who seeks eviction decree on the ground

of personal bona fide requirement is not getting the timely justice and he ultimately gets the decree after 10 to 15 years, at times cause for getting the eviction decree on the ground of personal bona fide requirement may be defeated. The resultant effect would be that such a litigant would lose confidence in the justice delivery system and instead of filing civil suit and following the law he may adopt the other mode which has no backing of law and ultimately it affects the rule of law. Therefore, the court shall be very slow in granting adjournments and as observed hereinabove they shall not grant repeated adjournments in routine manner. Time has now come to change the work culture and get out of the adjournment culture so that confidence and trust put by the litigants in the Justice delivery system is not shaken and Rule of Law is maintained.

5.6 In view of the above and for the reasons stated above and considering the fact that in the present case ten times adjournments were given between 2015 to 2019 and twice the orders were passed granting time for cross examination as a last chance and that too at one point of time even a cost was also imposed and even thereafter also when lastly the High Court passed an order with extending the time it was specifically mentioned that no further time shall be extended and/or granted still the petitioner – defendant never availed of the liberty and the grace shown. In fact it can be said that the petitioner – defendant misused the liberty and the grace shown by the court. It is reported that as such now even the main suit has been disposed of. In view of the circumstances, the present SLPs deserve to be dismissed and are accordingly dismissed.”

9. Appeal is accordingly dismissed for non prosecution.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS