



2025:DHC:9922-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA(COMM) 331/2025, CM APPL. 34907/2025, CM APPL.
34908/2025 & CM APPL. 34909/2025

M S AGGARWAL POLYMERS
INDIA & ANR.

.....Appellants

Through: Ms. Ruchi Gupta, Adv.

versus

M S SRI RAM PLASTOCHEM PVT LTD.Respondent
Through: Mr. Manish Rathore, Ms.
Komal Chhibber and Mr. Sahil Kalra, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **10.11.2025**

C. HARI SHANKAR, J.

CM APPL. 34909/2025 (Delay of 780 days in filing appeal)

1. This application seeks condonation of an inordinate delay of 780 days in filing RFA (Comm) 331/2025.

2. On the aspect of delay in commercial matters, the Supreme Court has taken an extremely strict view, as is reflected from the following passages from the decision in **Government of Maharashtra v Borse Bros. Engineers & Contractors (P) Ltd¹**:

“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

¹ (2021) 6 SCC 460



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 laches.”

3. We, therefore, cannot condone delay as inordinate as 780 days without cogent grounds having been made out by the appellants justifying such condonation.

4. We have heard Ms. Ruchi Gupta, learned Counsel for the appellants at some length on this application. Ms. Gupta’s contention is that fraud had been committed by the respondent and that, where fraud is committed, limitation does not enter the picture. She relies, for this purpose, on the judgment of the Supreme Court in **Vishnu Vardhan v State of UP**².

5. We do not deem it necessary to advert to the relevant paragraph from the said decision, as the proposition mooted by Ms. Ruchi Gupta is unexceptional. There can be no doubt about the fact that fraud unravels everything, ecclesiastical as well as temporal, and that, where fraud is found to exist, all equities stand divested. If the respondent had committed a fraud, there can be no doubt about the fact that the appellants might not be hit by limitation.

6. We, therefore, called upon Ms. Gupta to substantiate her

² 2025 SCC OnLine SC 1501



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argument that there was fraud committed by the respondent.

7. Ms. Gupta's only contention, on the basis of which she bases the allegation of fraud, is based on a "certificate of non-starter report" dated 3 December 2020 issued by the North District Legal Services Authority³, which reads as under:

"Ref.334/mediation/comm.-dispute/north/2020 Dated 03.12.2020

Certificate of Non-Starter Report

Name of the applicant: M/s. Sri Ram Plastochem Pvt. Ltd

Date of application for pre-Institution mediation:
02.11.2020.

Name of opposite party: M/s Aggarwal Polymers India &
Ors!

Date scheduled for obtaining consent of opposite party:
19.11.2020, 03.12.2020.

Report made under rule 3(4) or 3(6): Under Rule 3(6).

Non Starter Report reason: Notice/Final Notice served to the respondent and the respondent failed to give consent before this Authority on the fixed date mentioned in the Notice/ Final Notice.

It seems that respondent is not interested in the Pre-Institution Mediation Process.

Sd.
Harjeet Singh Jaspal
Secretary- North District
District Legal Services Authority
Rohini Courts, Delhi."

8. We may note that the afore-extracted certificate was issued in

³ "DLSA", hereinafter



view of the mandate of Section 12A of the Commercial Courts Act, 2015, which requires pre-institution mediation before any commercial suit is instituted. The respondent relied on the aforesaid certificate of “non-starter report” issued by the North DLSA to contend that Section 12A stood exhausted.

9. Ms. Gupta submits that the statement, in the aforesaid certificate, that notice had been served on the appellants, and the appellants had failed to give consent to the North DLSA, is incorrect as no notice was sent or served on the appellant by any means known to law.

10. That, however, if anything, can only be an error in the certificate of non-starter report dated 3 December 2020. It is not Ms. Gupta’s contention - as it cannot be – that there was any collusion between the North DLSA and the respondent.

11. In that view of the matter, even if it were to be presumed, for the sake of argument, that Ms. Gupta’s contention regarding the reference to the notice having been served on the appellants in the certificate of non-starter report issued by the North DLSA is incorrect, that cannot translate into fraud having been committed by the respondent.

12. We may, in this context, advert to certain authorities which have expounded the concept of fraud when committed by a litigant.



13. **S.P. Chengalvaraya Naidu v Jagannath**⁴ defines “fraud” as “an act of deliberate deception with the design of securing something by taking unfair advantage of another” and “a deception in order to gain by another’s loss ... a cheating intended to get an advantage”. **Ram Chandra Singh v Savitri Devi**⁵ squarely addressed the concept of fraud in litigation, and held:

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In **Derry v Peek**⁶ it was held:

“In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit.

⁴ (1994) 1 SCC 1

⁵ (2003) 8 SCC 319

⁶ (1889) 14 AC 337



22. Recently this Court by an order dated 3-9-2003 in **Ram Preeti Yadav v U.P. Board of High School & Intermediate Education**⁷ held:

“13. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See **Derry v Peek.**)

14. In **Lazarus Estates Ltd. v Beasley**⁸ the Court of Appeal stated the law thus:

‘I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;’

15. In **S.P. Chengalvaraya Naidu v Jagannath** this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal.”

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. *Fraud and deception are synonymous.*

24. In Arlidge & Parry on Fraud, it is stated at p. 21:

“Indeed, the word sometimes appears to be virtually synonymous with ‘deception’, as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context ‘fraud’ included certain kinds of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit ‘under false pretences, or by means of any other fraud’. In **Jones**, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of

⁷ (2003) 8 SCC 311

⁸ (1956) 1 All ER 341



obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly, it has been suggested that a charge of conspiracy to defraud may be used where a ‘false front’ has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act, 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both **Jones** and the ‘false front’ could now be treated as cases of obtaining property by deception.”

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.”

14. Shrisht Dhawan v Shaw Brothers⁹ is also instructive in this regard:

“20. *Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, ‘wing me into the easy-hearted man and trap him into snares’. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it*

⁹ (1992) 1 SCC 534



was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract *with intent to deceive another*. From dictionary meaning or even otherwise *fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false*. In a leading English case [**Derry v Peek**] what constitutes fraud was described thus:

“[F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.”

But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in **Khawaja v Secretary of State for Home Deptt.**¹⁰, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. In **Pankaj Bhargava v Mohinder Nath**¹¹, it was observed that fraud in relation to statute *must be a colourable transaction* to evade the provisions of a statute. “If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.” [*Craies on Statute Law*, 7th edn., p. 79] Present day concept of fraud on statute has veered round *abuse of power or mala fide exercise of power*. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by *disclosure of incorrect facts knowingly and deliberately* to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. “In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain.”

¹⁰ (1983) 1 All ER 765

¹¹ (1991) 1 SCC 556



[Anson's Law of Contract] In public law the duty is not to deceive. For instance non-disclosure of any reason in the application under Section 21 of the Act about its need after expiry of period or failure to give reason that the premises shall be required by son, daughter or any other family member does not result in misrepresentation or fraud. It is not misrepresentation under Section 21 to state that the premises shall be needed by the landlord after expiry of the lease even though the premises in occupation of the landlord on the date of application or, after expiry of period were or may be sufficient. A non-disclosure of fact which is not required by law to be disclosed does not amount to misrepresentation. Section 21 does not place any positive or comprehensive duty on the landlord to disclose any fact except that he did not need the premises for the specified period. Even the Controller is not obliged with a pro-active duty to investigate. Silence or non-disclosure of facts not required by law to be disclosed does not amount to misrepresentation. Even in contracts it is excluded as is clear from explanation to Section 17 unless it relates to fact which is likely to affect willingness of a person to enter into a contract. Fraud or misrepresentation resulting in vitiation of permission in context of Section 21 therefore could mean disclosure of false facts but for which the Controller would not have exercised jurisdiction.”

(Emphasis supplied)

State of Maharashtra v Dr. Budhikota Subbarao¹² defines “fraud” as “false representation by one *who is aware that it was untrue with an intention to mislead the other* who may act upon it to his prejudice and to the advantage of the representor”.

15. In the present case, clearly, the respondent cannot be held to be guilty of any fraud as would enable the Court to close its eyes to the delay of 780 days in instituting the present appeal. The error in the “certificate of non-starter report”, assuming *was* an error, was by the DLSA, and not by the respondent. There is, thankfully, no allegation of collusion between the respondent and the DLSA – as, indeed, there cannot be.

¹² (1993) 2 SCC 567



16. In fact, the primary ground advanced in the present application, for condonation of delay, is not of fraud on the respondent's part, but that there was negligence on the part of the Counsel appearing for the appellants in prosecuting the matter.

17. This aspect stands covered by the recent decision of the Supreme Court in **Rajneesh Kumar v Ved Prakash**¹³ as well as by a judgment of a Coordinate Bench of this Court, authored incidentally by one of us (C. Hari Shankar, J.) in **Rahul Mavai v UOI**¹⁴. The relevant paragraphs of the said decisions may be reproduced thus:

From **Rajneesh Kumar**

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

From **Rahul Mavai**

“3. The explanation in para 4 of the writ petition can hardly explain six years of delay in approaching the Court.

4. We also disapprove the unwholesome practice of seeking to explain away inordinate delay and laches on approaching the Court on the mere ground that the Counsel who had been dealing with, or entrusted, the matter, was tardy, negligent, or indolent. At times, this assertion is sought to be supported by an assertion that the

¹³ 2024 SCC OnLine SC 3380

¹⁴ 2024 SCC OnLine Del 9050



litigant has approached the Bar Council concerned against the counsel.

5. We emphatically disapprove of this practice of shifting, to the shoulders of the Counsel, the negligence in approaching the Court. It is easy, in such circumstances, to file a complaint before the Bar Council and seek to explain away the delay. We deprecate this. A litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.

6. That said, if, in fact, the Counsel has been negligent, the litigant would have to place, on record, material to indicate that she, or he, has been in touch with the Counsel during the entire period of delay, and that the Counsel has been misleading her, or him. This material must be acceptable, and convincing. The Court has to be satisfied that, in fact, the Counsel has been misleading the client, and that this explains the entire period of delay in approaching the Court. Of course, if the Court is so satisfied, and an innocent litigant has been led up the garden path by an unscrupulous Counsel, the court would not allow injustice to be done, and would, in an appropriate case, condone the delay.”

18. Mere allegations of laxity on the part of Counsel, therefore, cannot constitute a legitimate basis to condone a delay as inordinate as 780 days, especially in a commercial matter.

19. No other ground for condonation of delay having been advanced, we are constrained to hold that there is no sufficient cause to condone the delay in instituting the present appeal.

20. The application for condonation of delay is dismissed.

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21. In view of the dismissal of the application for condonation of delay, the appeal as well as the other applications filed within would



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also be dismissed on the ground of delay without going into the merits.

22. Needless to say, as we are not entertaining the appeal, any amount deposited by the appellants would be returned to the appellants.

C.HARI SHANKAR, J

OM PRAKASH SHUKLA, J

NOVEMBER 10, 2025/gunn