



2025:DHC:10037



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 13th November, 2025
Judgment pronounced on: 15th November, 2025

+ FAO 503/2019 & CM APPLs. 54666/2019, 54668/2019, 49128/2022
& 49129/2022

SHUKAL GUPTA

.....Appellant

Through: Mr. S. Singhal, Advocate

Versus

EMPLOYEES STATE INSURANCE CORPORATION

.....Respondent

Through: Mr. T. Singhdev, Ms. Yamini Singh,
Mr. Tanishq Srivastava, Mr. Sourabh
Kumar and Mr. Vedant Sood,
Advocates

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

J U D G M E N T

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Section 82(2) of the Employees' State Insurance Act, 1948 (the ESI Act) has been preferred by the original appellant, late Sh. Shukal Gupta, the proprietor of M/s Vandana Carpets, a proprietorship concern engaged in the manufacture of machine-made, hand-tufted and hand-knotted carpets, registered with the Employees' State Insurance Corporation (the ESIC) under Code No. 11-20555.



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2. The dispute arises out of ESIC's assessment of contributions on alleged omitted wages for the period from April 1993 to March 1998, in respect of the establishment of the appellant, which culminated in the passing of orders under Sections 45A and 45AA of the ESI Act. Annexure B show-cause notice was first issued on 17.02.1999, proposing assessment of contribution. This was followed by an order under Section 45A of the ESI Act on 16.02.2000, where after the appellant furnished representations and produced statutory records seeking formal verification. Between 2000 to 2008, the ESIC issued recovery notices on multiple occasions, at times contemplating warrant proceedings, while the appellant continued to seek reconsideration and made deposits. During this period, the ESIC kept the matter in abeyance on various occasions pending re-verification. Inspections and verification exercises were undertaken on 27-28 October 1998, during 2003 - 2004, and once again on 23.09.2013, followed by further correspondence.

3. Ultimately, the ESIC passed an assessment/recovery order dated 24.03.2014, finalising the contribution demand for the period in question. The appellant preferred an appeal under Section 45AA of the ESI Act, which came to be disposed of on 08.10.2014, determining the payable



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contribution at ₹4,01,516/-, besides applicable interest. Aggrieved, the appellant instituted proceedings under Section 75 of the Act before the ESI Court, which, by judgment dated 31.07.2019, dismissed the petition. The present appeal, FAO 503/2019, was thereafter filed under Section 82(2) of the Act, giving rise to the proceedings presently before this Court.

4. While the appeal was pending before this Court, the original appellant expired on 11.05.2020. Applications were then filed by the widow and sons of the deceased seeking their substitution as legal representatives under Order XXII Rule 3 of the Civil Procedure Code, 1908 (CPC), along with an application under Section 5 of the Limitation Act, 1963 (the Act) seeking condonation of delay of 871 days in filing the substitution application.

5. The respondent–ESIC has contested the substitution as well as the condonation sought, primarily on the ground that the delay is inordinate, unexplained, contradictory, and unsupported by material particulars.

6. In this backdrop, it becomes necessary to clarify that the present judgment is confined only to the determination of the applications for condonation of delay and substitution of legal representatives. Consideration of the merits of the appeal, and of the challenge to the ESIC assessment and



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orders, shall arise only if the applicants succeed in crossing the threshold of substitution.

7. The learned counsel for the applicant submitted that the original appellant, passed away on 11.05.2020, during the pendency of the present appeal, and that he is survived by his widow and two sons. Presently, the wife/the applicant herein is now in charge of the affairs of the Concern. The applicant learnt of the appeal only in October 2022, when a consultant associated with the establishment's ESIC matters informed them that an appeal relating to the demand on M/s Vandana Carpets was pending. Upon receiving this information, the applicant contacted the counsel of the deceased appellant.

7.1 It is stated that only thereafter did the applicant come to know that the statutory period for filing an application under Order XXII Rule 3 CPC had expired. On legal advice, she has filed the present substitution application along with an application under Section 5 of the Act seeking condonation of 871 days' delay (while the condonation application refers to 819 days). It is submitted that the delay arose solely due to the applicant's *bona fide* ignorance of the proceedings.



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7.2 The learned counsel for the Applicant would further emphasise that the appellant had passed away in the midst of the COVID-19 pandemic, and that considerable disruption was caused during that period. It was urged that the pandemic further contributed to the applicants' inability to communicate with the counsel or ascertain the status of the litigation.

7.3 The learned counsel augmented his contention by stating that the appeal is filed by M/s Vandana Carpets, a proprietorship concern, and not against the individual proprietors in their personal capacity. He states that the business concern continues to exist, and therefore, substitution of the legal representatives is necessary to enable the appeal to survive. According to counsel, if substitution is refused, not only would the appeal abate, but the establishment would be left remediless against the ESIC demand.

7.4 It is therefore submitted that the delay is neither intentional nor due to any neglect, and that the reasons given constitute "sufficient cause" under Section 5 of the Act. Counsel accordingly prays that the delay be condoned and the applicant be brought on record as legal representative so that the appeal may proceed on merits.



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8. On the other hand, the learned counsel for the respondent opposes the applications, submitting that the delay of 871/819 days is inordinate and wholly unexplained, and that the applicant has failed to furnish any credible or satisfactory justification for approaching the Court after more than two years. It is argued that such prolonged silence by the legal heirs cannot be condoned.

8.1 The counsel draws attention to Article 120 of the Act, which provides a 90-day limit for bringing the legal representatives on record. It is submitted that, in view of the appellant's demise on 11.05.2020, the present applications—filed after an inordinate—are *ex facie* barred.

8.2 During oral submissions, the learned counsel for the respondent highlighted that the applicant's explanation was internally inconsistent. The substitution application cites 871 days of delay, while the condonation application cites 819 days, indicating a lack of precision and casting doubt on the bona fides of their explanation.

8.3 The learned counsel would further contend that the applicant's assertion that they became aware of the appeal through an unnamed consultant in October 2022 is vague, unsupported and inherently implausible. No details of the said consultant—name, role or



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circumstances of the disclosure—have been furnished. It was argued that such an explanation is unverifiable and does not inspire confidence.

9. The learned counsel for the respondent stated that it is difficult to believe that the widow and sons of the deceased appellant remained unaware for more than two years, and did not contact the counsel at any point. Even taking into account the difficulties posed by COVID-19, it was submitted that at most one year could be excluded, and the remaining period remains wholly unexplained. The applicant's claim of ignorance of the proceedings for over two years is untenable. It is urged that condoning such an extraordinary delay would unsettle long-standing statutory proceedings and prejudice the respondent; hence both applications deserve dismissal.

10. Heard the rival contentions advanced by the parties and examined the applications, the replies thereto, and the material placed on record.

11. The principal issue that falls for consideration at this stage pertains solely to the request for substitution of the legal representatives of the deceased appellant and the prayer for condonation of the substantial delay in moving such request. The merits of the appeal do not arise for consideration



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unless the applicants first succeed in satisfying the Court that the delay deserves to be condoned.

12. The records indicate that the appellant, passed away on 11.05.2020 during the pendency of this appeal. No application was filed within the time prescribed for bringing his legal representatives on record, nor was any explanation furnished during that period. It was only in October 2022, more than two years after his demise that the applicant approached the Court with an application under Order XXII Rule 3 CPC, accompanied by a request for condonation of delay, stated as 871 days in one application and 819 days in another.

13. The justification offered for this delay is that the applicants were unaware of the pendency of the appeal and came to know of it only in October 2022 when a consultant allegedly informed them of the same. However, the identity of the said consultant, the circumstances in which the information was conveyed, or any material to substantiate this assertion have not been disclosed. The applicants have also not indicated when they contacted the counsel representing the deceased appellant or what steps were taken thereafter. In the absence of these essential particulars, the explanation



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remains general and uncorroborated, and does not satisfactorily account for a delay of this magnitude.

14. Even if some allowance is made for the disruption caused by the COVID-19 pandemic, the passage of more than two years without any inquiry or step taken by the immediate family members of the deceased appellant remains unexplained.

15. It is well settled that while the expression “sufficient cause” under Section 5 of the Act deserves a liberal construction, such liberality cannot be extended to condone prolonged and unexplained inaction. The Apex Court has repeatedly held that a mere assertion of ignorance, unsupported by material particulars, does not meet the statutory threshold. The burden lies upon the applicants to establish that they were prevented by circumstances beyond their control from acting within time; vague and unverified assertions cannot discharge that burden.

16. In this context, it is apposite to notice the recent pronouncement of the Hon’ble Supreme Court in **Om Prakash Gupta alias Lalloowa & Ors. v. Satish Chandra / Rooprani, 2025 INSC 183**, which reiterates that although courts may adopt a justice-oriented and pragmatic approach in applications concerning abatement and substitution, such leniency is not attracted where



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the record discloses prolonged, unexplained inactivity. The Court clarified that revival may be justified where death has been duly intimated under Order XXII Rule 10-A CPC or where the plea of ignorance is supported by circumstances on record; however, a generalised assertion unaccompanied by particulars, corroboration, or any contemporaneous conduct is insufficient to constitute “sufficient cause”. In the present case, there is no intimation of death on the file, no material verifying the alleged disclosure by a consultant in October 2022, no evidence of any attempt to contact counsel or the Court during the intervening period, and even inconsistencies in the computation of delay. Applying the principles in **Om Prakash Gupta(Supra)**, the explanation offered falls markedly short of the legal standard required for condonation.

17. In these circumstances, this Court is not persuaded that the reasons offered constitute “sufficient cause” for condonation of the extraordinary delay in bringing the legal representatives on record. The requirements of Section 5 of the Act remain unfulfilled.

18. Consequently, the application seeking condonation of delay cannot be allowed. The application for substitution under Order XXII Rule 3 CPC,



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being dependent upon the success of the condonation application, must also fail.

19. For the reasons stated hereinabove, the application seeking condonation of delay in moving the substitution application is dismissed. As a corollary, the application under Order XXII Rule 3 CPC for bringing the legal representatives of the deceased appellant on record is also dismissed. The appeal, having abated and there being no surviving appellant before the Court, stands disposed of accordingly. No order as to costs.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 15, 2025

p'ma/RN