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

Date of decision: 27th JANUARY, 2025

IN THE MATTER OF:

+ TEST.CAS. 48/2017

BHARAT MOHAN KOHLI

.....Petitioner

Through: Mr Abhimanyu Mahajan, Mr Mayank
Joshi, Advocates

versus

STATE & ORS

.....Respondent

Through: Mr. Vineet Jhanji & Imran Moulaley,
Advocates for Respondents No. 4, 5
& 11

Ms Ramni Taneja Advocate Ms S.
Rohini Advocate for Applicant

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

I.A. 1167/2025 & O.A. 13/2025

1. O.A. 13/2025 has been filed by the Appellant under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 against the Order dated 10.04.2023, passed by the learned Joint Registrar (Judicial) of this Court dismissing the application, being IA No.5009/2021, filed by the Appellant to implead herself as a party to the present Petition.

2. I.A. 1167/2025 has been filed by the Appellant/Applicant seeking condonation of delay of 636 days in filing O.A. 13/2025.

3. Shorn of unnecessary details, the facts leading to O.A. 13/2025 are that the present case has been filed by the Petitioner herein - Mr. Bharat

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Mohan Kohli seeking grant of Letter of Administration in respect of the last Will dated 27.10.2013 of Late Shri Man Mohan Kohli (hereinafter referred to as "the Testator"). It is stated that the Petition was originally filed by Shri J.B. Kohli and Shri Rajive Sawhney, Sr. Advocate, who were the Executors of the Will dated 27.10.2013, but they both passed away during the pendency of the Petition and consequently, the Petitioner herein, who was the beneficiary, was substituted in the Petition. It is stated that the Testator was not married and he had no children of his own. It is stated that the Testator passed away on 23.03.2015 leaving behind no class-I legal heirs. It is stated that the Testator was survived by five sisters and two brothers, who have been arrayed as Respondents to the present Petition. It is stated that the Petitioner is the younger son of the brother of the Testator and the Testator treated the Petitioner as his own son. It is stated that after demise of the Testator, the Petitioner herein performed the last rites of the Testator. It is stated that the Testator left behind some moveable and immovable properties. It is interesting to note that the Appellant/Applicant herein was named as the one of the witnesses by the Petitioner. However, during the pendency of the Petition, the Appellant/Applicant herein filed IA No.5009/2021 seeking her impleadment in the present Petition. In the said application, it was stated by the Appellant/Applicant that she is a lady of French Origin and has been residing in India for over four decades since 1980. It was also stated in the said application that the Appellant/Applicant is a classical Bharata Natyam Dancer of international repute and has been conferred the Padma Shri Award by the President of India in 2009. In the said application it is also stated that the Appellant/Applicant herein and the Testator knew each other since 1983 and had a lifelong loving relationship



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which is "in the nature of marriage" and they were known by the society at large as spouses. In the said application it is also stated that the Testator had completed all the formalities which are required for marriage like applying *Sindoor* on her forehead and tying a *Mangalsutra* on the neck of the Appellant/Applicant herein and the Appellant/Applicant also resided with the Testator in his house at C-27, Friends Colony, New Delhi. In the said application the Appellant/Applicant herein has alleged that the Will dated 27.10.2013 is false and frivolous and that the Testator was suffering from lung cancer, dementia & acute depression and was not even able to comprehend minor things when the Will dated 27.10.2013 was executed. The said application was opposed by the Petitioner herein and all other brothers and sisters of the Testator and the only objector to the Will dated 27.10.2013 was Respondent No.12 herein. This Court is not going into the various instances stated by the Appellant/Applicant herein challenging the Will and the rival contentions raised by the Petitioner and the Respondents in the said application. Learned Joint Registrar (Judicial) of this Court dismissed the said application *vide* Order dated 10.04.2023 stating that no document has been placed on record by the Appellant/Applicant to show that the Appellant/Applicant was ever married to the Testator or that he had ever completed all the formalities constituting marriage with the Appellant/Applicant. The learned Joint Registrar held that the photographs which have been annexed do not showcase any occasion of marriage wherein the Testator has applied any *sindoor* on the forehead of the Appellant/Applicant or has tied any *mangalsutra* on her neck for the purpose of marriage. The learned Joint Registrar further held that no date, month or year has been disclosed wherein such an event has occurred. Learned Joint



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Registrar has further held that the Appellant/Applicant has alleged her relationship with the Testator be considered as "marriage" at best and "live in" at worst. Learned Joint Registrar was of the opinion that the Appellant/Applicant has not been able to substantiate her contention of marriage with the Testator. The learned Joint Registrar has also analyzed each of the documents filed by the Appellant/Applicant to come to the conclusion that the Appellant/Applicant has not been able to prove that she lived with the Testator for over 30 years at his property. Learned Joint Registrar also put a question to the Appellant/Applicant herein stating that as to why did she not raise any claim for over three years after the death of the Testator herein. After analyzing the material placed on record, the learned Joint Registrar came to the conclusion that the Appellant/Applicant herein is not a legal heir of the Testator who can inherit the property of the Testator under the law of Succession and, therefore, the learned Joint Registrar *vide* Order dated 10.04.2023 dismissed the application of the Appellant/Applicant herein refusing to implead her in the present Petition.

4. It is this Order which is under challenge in O.A. 13/2025.
5. Material on record shows that O.A. 13/2025 was filed in January, 2025. I.A. 1167/2025 has been filed by the Appellant/Applicant seeking condonation of delay of 636 days in filing O.A. 13/2025.
6. In I.A. 1167/2025, the reasons given by the Applicant for condonation of delay are that the Order rejecting the application for impleadment of the Applicant was dismissed by the Joint Registrar on 10.04.2023 and despite the Appellant/Applicant contacting her erstwhile Advocate on many occasions during the months from April 2023 till July 2023, she was not informed by her erstwhile Advocate regarding the Order dated 10.04.2023.



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It is stated that the Appellant/Applicant made several attempts to reach to her previous Advocate from the month of April till July 2023, but she did not receive any communication in return. It is stated that the Appellant asked her friends in Delhi to help her in obtaining a copy of the Order of the Learned Joint Registrar as she had been informed on 23 March 2023 by her previous Advocate that the Order was expected to be pronounced by the Learned Joint Registrar on 10th April 2023. It is stated that it was around the end of August 2023 when one of the friends of the Appellant informed her that an Order had been passed on 10th April 2023 by the Learned Joint Registrar, dismissing the Impleadment Application of the Appellant. It is stated that the Appellant was devastated when she heard this news from her friends. It is stated that the Appellant was unwell and was unable to concentrate on legal issues during the period between September 2023 till the first three months of 2024, i.e. from January 2024 to March 2024. It is stated that during the month of September 2023 the Appellant was hospitalised. It is also stated that the Appellant also underwent physiotherapy for the whole year in 2023 and in the first quarter of 2024. It is stated in the Application that the Appellant can produce her medical documents if called to do so. It is stated that the Appellant found it difficult to focus on legal issues as her health was her priority, especially due to her being an international artiste of international renown. It is further stated that being a French citizen and being advanced in age, the Appellant has been unaware of her rights under Indian law and she found it difficult to have access to Indian Advocates in New Delhi during the year 2023 and also earlier in 2024. It is stated that once the Appellant/Applicant felt better in terms of her health in the year 2024, the Appellant contacted the French



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Embassy in New Delhi in April 2024, and obtained names of Indian Advocates from the French Embassy in New Delhi. It is stated that the Appellant went through the list of names of Advocates recommended by the French Embassy in New Delhi and consulted a few of these Advocates in April 2024. It is stated that while she was in the process of choosing an Advocate from the list of Indian Advocates provided to her by the French Embassy in New Delhi, in the month of April 2024, the Appellant instructed one of the Indian Advocates from the list to help her to obtain the Order dated 10.04.2023. It is stated that in the middle of April 2024, the Advocate provided the Appellant with a copy of the Order dated 10.04.2023. It is stated that the Appellant instructed the same Indian Advocate to obtain a certified copy of the Deed of Relinquishment dated 25.02.2021, from the Office of the Sub-Registrar, Dehradun. It is stated that in June 2024, the Appellant chose the same Indian Advocate, who helped her obtain the certified copy of the Relinquishment Deed, to represent her in her cases in the Courts in Delhi, including the present Original Appeal. It is stated that during the period between July and August 2024, the Appellant and her Indian Advocate went through the pleadings that were filed by the erstwhile Advocate in the present case and the Appellant and her Indian Advocate also decided to consult a Senior Advocate during the months of July and August 2024 in this matter due to the complexities involved in this case. It is stated that after seeking the advice of Senior Counsel, the Appellant has been advised to file the present Appeal seeking the reliefs prayed for herein. It is stated that the Appellant has also been advised by the Senior Counsel and by her Advocate to challenge the Judgment dated 29.05.2024, passed by this Court in the present Petition wherein this Court has granted Letters of



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Administration to the Petitioner herein, by filing an appropriate application seeking revocation and/or annulment of the Letters of Administration. It is stated that on the advice of her Counsel, the Appellant herein filed a Civil Suit in the District Court at Saket, South East, New Delhi, seeking certain declaratory reliefs and mandatory injunctions. It is stated that the Appellant's Counsel drafted the present Appeal during the months of November and December 2024 and the same was carefully reviewed by the Appellant three times to ensure that every lacuna and every error in the impugned Order dated 10.04.2023 is rebutted in terms of the facts and in terms of the law. It is stated that during the month of December 2024, the Appellant and her Counsel discussed the draft of the Appeal in detail and made a few edits and filed the same.

7. This Court is not in a position to accept the explanation given by the Appellant. The Appellant was very much aware of her application for impleadment. This Court is not in a position to accept the explanation given by the Appellant that the Appellant had no knowledge of Indian laws and had no access to Advocates. According to the Appellant she has been living in India since 1980 and has, therefore, lived in this country for over 40 years and, therefore, this Court is not able to accept the reasons given by the Appellant. The arguments raised by the learned Counsel for the Appellant in IA No.5009/2021 shows that the Appellant was represented by an able counsel. The Appellant has tried to put the blame of delay on her erstwhile Advocate by stating that her erstwhile Advocate did not provide her with a copy of the Order dated 10.04.2023. This reason is unacceptable by this Court. Appellant has not filed any complaint against her erstwhile Advocate. Even otherwise, as stated above, since the Appellant was in Delhi for the



past 45 years it cannot be said that the Appellant had not contacted any Advocate in Delhi and had to take help of the French Embassy in Delhi to get assistance of an Advocate. A co-ordinate Bench of this Court in Moddus Media Pvt. Ltd. v. Scone Exhibition Pvt. Ltd., **2017 SCC OnLine Del 8491**, has held as under:

"13. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences.

14. In a case before Division Bench of this court in Man Singh (deceased) through L. Rs. v. Gaon Sabha



Jindpur, 2012 (4) ILR (Del) 50, it was contended that the appellants were under the bonafide impression that the matter is being properly looked after by the counsel. It was held that the litigant has to be vigilant and he should contact and take part in the proceedings with due diligence and if negligence on the part of the litigant is established in a particular case, then the courts are not to come to the rescue of such applicants. The Division Bench of this court has also cited a decision of the Apex Court, which reads as under:—

“7. The Apex Court in Hameed Joharan v. Abdul Salam, (2001) 7 SCC 573 2001 Ind law SC 21137 made the following observations:—

*“.....It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of rights.....””*

8. This Court is not able to accept the contention of the Appellant that she was helpless in getting the assistance of an Advocate and that the French Embassy had to come to her aid to get an Advocate.

9. Further, the Appellant has not filed any medical documents to show her medical condition which prevented her from filing an appeal against the Order dated 10.04.2023 within reasonable time. The Appellant has also not described her medical ailment. Merely undergoing Physiotherapy does not



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show that the condition of the Appellant was so bad that she could not take assistance of an Advocate to file an Appeal challenging the Order dated 10.04.2023. There is virtually no explanation for the gap between September, 2023 to April 2024. Merely stating that she was hospitalized for six months without giving any proof for the same is not an acceptable contention of the Appellant. This Court is of the opinion that the delay has not been explained ably. It is stated in the Application for condonation of delay that the Appellant/Applicant contacted an Advocate in April 2024. There is no reason forthcoming from the Appellant as to why the Appellant could not file the appeal between April 2024 to January 2025 and the reason given by the Appellant is completely perfunctory and unacceptable. Undoubtedly, the Courts must ensure that substantive rights of parties are not defeated at the threshold simply due to technical considerations of delay and that condonation of delay is a discretionary power. However, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation. The reason for long delay has to be well explained and justified. The Apex Court in Sheo Raj Singh v. Union of India, (2023) 10 SCC 531, has brought out the distinction between explanation and excuse and has held as under:

"31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an "explanation" and an "excuse". An "explanation" is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has



happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an “explanation” from an “excuse”. Although people tend to see “explanation” and “excuse” as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An “excuse” is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an “excuse” would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

*33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that “a court of appeal should not ordinarily interfere with the discretion exercised by the courts below”. If any authority is required, we can profitably refer to the decision in *Manjunath Anandappa v. Tammanasa* [*Manjunath Anandappa v. Tammanasa*, (2003) 10 SCC 390], which in turn relied on the decision in *Gujarat Steel Tubes Ltd. v. Gujarat**



Steel Tubes Mazdoor Sabha [Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593 : 1980 SCC (L&S) 197] where it has been held that:

“an appellate power interferes not when the order appealed is not right but only when it is clearly wrong”.(emphasis in original)”

10. As pointed out by the Apex Court, an excuse is offered by a person to deny responsibility and consequences and an explanation is designed to give someone all of the facts and lay out the cause for something. In the opinion of this Court, the Appellant is only giving excuses as to why she has not preferred the Appeal within a reasonable time. Delay of 636 days is a long delay. It is equally well settled that law is meant for the vigilant and not for the indolent and Courts ought not to help the persons who have not been vigilant to pursue their cases. The Apex Court in Hameed Joharan v. Abdul Salam, (2001) 7 SCC 573, has held as under:

*"14. Needless to record that engrossment of stamped paper would undoubtedly render the decree executable but that does not mean and imply, however, that the enforceability of the decree would remain suspended until furnishing of the stamped paper — this is opposed to the fundamental principle on which the statutes of limitation are founded. **It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity — the Latin maxim vigilantibus et non dormientibus jura subveniunt (the law assists those who are vigilant and not those who are indolent). As***



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a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in Manby v. Bewicke [(1857) 3 K&J 342 : 69 ER 1140] (K&J at p. 352) stated: (ER p. 1144)

“The legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceful possession of their property, and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain.” (emphasis supplied)

11. In view of the absence of any sufficient explanation as to what prevented the Appellant from approaching this Court by filing an appeal within a reasonable time, this Court is not in a position to condone the delay of 636 days in filing the Appeal.

12. Accordingly, I.A. 1167/2025 is dismissed.

13. In view of the fact that the application for condonation of delay of 636 days in filing O.A.13/2025 has been dismissed, O.A.13/2025 also stands dismissed.

I.A. 1160/2025 & I.A. 1161/2025

14. List on 21.05.2025.

SUBRAMONIUM PRASAD, J

JANUARY 27, 2025

Rahul