



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17.08.2026
Date of Decision: 25.08.2026
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CNR No. DLHC010008502011

+ CRL.M.C. 1682/2011 & CRL.M.A. 1332/2025, CRL.M.A.
1333/2025

I T E DESIGN P.LTD. & ANR.

.....Petitioners

Through: Mr. Abhinav Hansaria and Mr.
Sarhak Sharma, Advs.

versus

HARISH CHANDRA INDIA LTD.

.....Respondent

Through: Mr. Atul Sahi and Mr. Suryans
Agarwal, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present application, being **CRL.M.A. No. 1332/2025**, has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') on behalf of the petitioners seeking recall of the order dated 11.07.2022, whereby **CRL.M.C. No. 1682/2011** was dismissed for non-prosecution, and restoration of the said petition to its original number and status. The application is accompanied by **CRL.M.A. No. 1333/2025** seeking condonation of delay of 919 days in filing the restoration application.

BRIEF FACTS OF THE CASE

2. The petitioners had instituted **CRL.M.C. No. 1682/2011** under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as



‘Cr.P.C.’) seeking quashing of the order dated 15.11.2010 passed by the learned Metropolitan Magistrate, whereby the petitioners had been summoned in a complaint instituted by the respondent under Sections 138 and 141 of the Negotiable Instruments Act, 1881.

3. On 23.05.2011, this Court, upon considering the petition, observed that the matter prima facie required consideration, issued notice to the respondent and stayed the proceedings before the learned Trial Court. The matter was thereafter listed on various dates. On 27.09.2013, this Court observed that the matter required full-fledged hearing, admitted the petition and directed that it be listed as a Regular matter. The interim order dated 23.05.2011 was also made absolute. The matter thereafter continued to remain pending. It was listed on 02.01.2014, 20.02.2014, 05.08.2014 and was thereafter taken up on 11.07.2022. On 11.07.2022, none appeared on behalf of either party and the petition was dismissed for non-prosecution.

4. The petitioners thereafter filed the present restoration application dated 21.10.2024, along with an application seeking condonation of 919 days’ delay in filing the same.

5. Notice was issued in both applications on 17.01.2025, pursuant to which the respondent filed its reply. On 16.05.2025, learned counsel appearing for the petitioners sought an adjournment stating that he did not have the complete file, which was stated to be with the erstwhile counsel. Thereafter, the petitioners filed an application seeking stay of the proceedings pending before the learned Trial Court in CC No. 517473/2016. The said application was dismissed by this Court on 29.10.2025, with a direction to the learned Trial Court to proceed with the matter without awaiting the outcome of the present proceedings, as no stay had been granted. On the same date,



learned counsel for the petitioners sought an adjournment in the restoration and condonation applications on the ground that the learned Senior Counsel who was to argue the matter was unavailable. Thereafter, on 17.04.2026, the matter could not be taken up as the arguing counsel for both sides were unavailable. The matter was thereafter re-notified and was finally heard on 17.08.2026.

SUBMISSIONS ON BEHALF OF THE PETITIONERS/APPLICANTS

6. Learned counsel for the petitioners submits that the dismissal of ***CRL.M.C. No. 1682/2011*** on 11.07.2022 for non-prosecution was neither deliberate nor attributable to any wilful default on the part of the petitioners. It is submitted that the petition had been pending since 2011 and had been duly pursued through the erstwhile counsel.

7. Learned counsel submits that after the matter was listed on 05.08.2014, it was not notified for approximately eight years and was thereafter taken up only on 11.07.2022. Since the matter had remained dormant for such a prolonged period, the petitioners were unable to track its subsequent listing. It is submitted that the absence of the petitioners on 11.07.2022 was, therefore, a bona fide and inadvertent lapse and not an intentional abandonment of the proceedings.

8. Learned counsel further submits that the petitioners ought not to be made to suffer on account of any lapse or negligence on the part of their erstwhile counsel. It is contended that the petitioners had engaged counsel to prosecute the proceedings and had no reason to believe that the matter, which had been pending for several years, would suddenly be listed after such a prolonged interval.



9. Learned counsel submits that the petitioners came to know about the dismissal only subsequently, while preparing for the final hearing of **CS(OS) No. 1849/2010**, when the erstwhile counsel informed them that **CRL.M.C. No. 1682/2011** had been dismissed for non-prosecution. It is submitted that the delay in filing the restoration application has thus been occasioned by the circumstances stated in the application and is neither intentional nor deliberate.

10. Learned counsel submits that this Court possesses inherent jurisdiction under Section 528 of the BNSS, corresponding to Section 482 Cr.P.C., to recall an order whereby a criminal petition has been dismissed for non-prosecution and to restore the same. It is contended that the order dated 11.07.2022 was not an adjudication on merits and, therefore, the restoration of the petition would enable the controversy raised therein to be considered on merits.

11. Learned counsel submits that the petitioners have a substantial case in the main petition and that grave prejudice would be caused if the same is not restored. It is submitted that the original petition challenges the criminal proceedings arising out of the dishonour of a cheque which, according to the petitioners, had been issued as a performance security and not towards discharge of any legally enforceable debt or liability.

12. Learned counsel further submits that the criminal proceedings have serious consequences for the petitioners and that the main petition had already been admitted by this Court and was found to require full-fledged hearing. It is, therefore, urged that the petitioners ought not to be deprived of an adjudication on merits merely on account of their non-appearance on one date.



13. On these grounds, learned counsel for the petitioners prays that the delay in filing the restoration application be condoned, the order dated 11.07.2022 be recalled, and **CRL.M.C. No. 1682/2011** be restored to its original number and status.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

16. Learned counsel for the respondent opposes the applications and submits that the petitioners have failed to furnish any cogent explanation either for their non-appearance on 11.07.2022 or for the subsequent delay of about three years in seeking restoration. It is contended that the petitioners were required to remain vigilant about the proceedings instituted by them and cannot shift the entire responsibility upon their erstwhile counsel.

17. Learned counsel for the respondent submits that the plea that the petitioners could not track the matter merely because it was not listed for several years is untenable, particularly when the petitioners are a company involved in multiple litigations and were regularly pursuing other proceedings between the parties. It is further submitted that the matter was duly notified for 11.07.2022 and the petitioners have failed to explain their absence on the said date.

18. Learned counsel for the respondent submits that the conduct of the petitioners before the learned Trial Court also demonstrates their lack of diligence and an attempt to evade the criminal proceedings. Reliance is placed upon the orders dated 30.09.2024, 28.02.2025 and 04.04.2025 passed by the learned Trial Court, particularly the observations regarding avoidance of the process of the Court. It is contended that the present restoration application has been filed only to avoid appearance before the learned Trial Court.



19. Learned counsel submits that the merits of the original CRL.M.C. are not relevant for deciding the present applications.

20. Learned counsel accordingly submits that the petitioners have failed to demonstrate sufficient cause or bona fides and that restoration at this stage would cause prejudice to the respondent. The applications are therefore liable to be dismissed and the order dated 11.07.2022 deserves to be maintained.

ANALYSIS AND FINDINGS

22. I have considered the submissions advanced by learned counsel for the parties and perused the record.

23. At the outset, there can be no quarrel with the proposition that this Court, in exercise of its inherent jurisdiction under Section 528 BNSS, may in an appropriate case recall an order whereby a criminal petition has been dismissed for non-prosecution. However, the existence of such power does not mean that restoration follows as a matter of course. The applicant seeking restoration must satisfy the Court that there was sufficient cause for the default and, where restoration is sought after a substantial lapse of time, must also satisfactorily account for such delay.

24. The Supreme Court in **Balwant Singh (Dead) v. Jagdish Singh & Ors. AIR 2010 SC 3043** has held that even where “sufficient cause” is to receive a liberal construction, such construction must remain within the concepts of reasonable time and proper conduct. The Court observed as under:

*“13. ...We may state that even if the term ‘sufficient cause’ has to receive liberal construction, it must squarely fall within the concept of **reasonable time and proper conduct of the concerned party**. The purpose of introducing liberal construction*



normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.”

(emphasis supplied)



25. The first and foremost aspect that requires consideration is whether the petitioners have made out sufficient cause for the delay of 919 days in filing the restoration application. It is well settled that while considering an application for condonation of delay, the length of delay is not by itself the sole criterion, what is material is the sufficiency of the explanation offered for the delay, and whether the same reflects bona fide conduct on the part of the applicant.

26. In the present case, the explanation offered is that since the matter remained dormant and unlisted for nearly eight years between 05.08.2014 and 11.07.2022, the petitioners were unable to track its listing, and that they learnt of the dismissal only while preparing for the final hearing of another matter pending between the parties, *i.e.* CS(OS) No. 1849/2010. This explanation, in the considered view of this Court, is neither satisfactory nor sufficient. The prolonged pendency of a matter, without more, does not absolve a litigant of the duty to remain vigilant regarding proceedings instituted at its own instance. If anything, the very fact that the petition had been pending for over a decade ought to have made the petitioners more, and not less, attentive to its progress. The petitioners are stated to be a company engaged in multiple parallel litigations with the respondent, including civil proceedings and proceedings before the learned Trial Court. A litigant of this nature, actively contesting connected matters between the same parties, cannot credibly plead ignorance of the fate of a connected criminal petition pending before this Court for over a decade.

27. It also merits emphasis that it was the petitioners themselves who were the beneficiaries of the interim stay granted on 23.05.2011 and made absolute



on 27.09.2013, by virtue of which the proceedings before the learned Trial Court remained stayed for over a decade. Having secured and enjoyed the benefit of such an order, it was all the more incumbent upon the petitioners to remain vigilant and to ensure that the petition, in which the stay operated in their favour, was diligently pursued to its logical conclusion. A party that continues to enjoy the fruits of an interim order cannot, at the same time, disclaim responsibility for monitoring the very proceedings which sustain that benefit. If, as contended, the matter was not being listed, it was open to and, indeed, incumbent upon the petitioners to move an appropriate application before the Registry or the Court seeking early listing, or at the very least to periodically verify the status of the case, particularly given that they continued to derive tangible advantage from the stay for well over ten years. Having taken no such steps for a decade, the petitioners cannot now be permitted to attribute their default to listing delays or other administrative or technical lapses.

28. The decision of this Court in ***Shazeb & Anr. v. State of NCT of Delhi & Anr.*** CRL.M.C. 4741/2017 is apposite. In the said case, the Court was dealing with an application seeking restoration of a petition dismissed for non-prosecution, filed with a delay of 913 days. Upon finding prolonged apathy and neglect on the part of the petitioners, the Court declined to exercise its discretion in their favour and observed as under:-

“ 9. The application seeking restoration was filed on 27.01.2023 and re-filed on 30.01.2023, after inordinate and unexplained delay. By way of CRL.M.A. No.2698/2023, the petitioners seek condonation of 913 days delay in filing of the restoration application



10. Be that as it may, complete apathy and neglect on the part of the petitioners to pursue the petition is writ large on the record. Litigants who do not care to follow-up on their matter for 3-½ years clearly deserve no indulgence by the court, much less in a petition invoking the inherent powers of the court under section 482 Cr.P.C. seeking quashing of an FIR.”

29. In the present case, the position is, in fact, more compelling. The petitioners had secured an order staying the criminal proceedings and thereafter allowed the matter to remain pending without bringing the proceedings to a conclusion. The protection obtained from this Court continued for years, while the petition itself was not effectively prosecuted. To condone the delay and restore the petition in these circumstances, despite the petitioners' failure to demonstrate due diligence, would result in the respondent being subjected once again to proceedings which have remained in abeyance for years by virtue of the petitioners' own invocation of the jurisdiction of this Court.

30. The submission that the petitioners should not suffer for the lapse of their counsel also cannot, in the facts of the present case, be accepted in absolute terms. The petitioners were themselves the beneficiaries of the stay order and were required to remain vigilant about a proceeding instituted by them. The responsibility of pursuing litigation cannot be completely shifted upon counsel, particularly when the consequence of the pending proceedings was that the criminal case against the petitioners remained stayed.

31. In ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy***, (2013) 12 SCC 649, the Supreme Court, while considering the principles governing condonation of delay, referred to and approved in ***G.***



Ramegowda, Major and Others v. Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142 :-

“7. In G. Ramegowda, Major and Ors. v. Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142, Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:

The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd (1962) 2 SCR 762; Shakuntala Devi Jain v. Kuntal Kumari (1969) 1 SCR 1006; Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979) 3 SCR 694; Lala Mata Din v. A. Narayanan (1970) 2 SCR 90; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”

(Emphasis supplied)

32. Further, the fact that the original petition may have arguable merits cannot, by itself, furnish a ground for condoning the delay or restoring the



proceedings. The merits of the main petition would arise for consideration only if the petition is first restored. The question presently before the Court is whether the petitioners have shown sufficient cause for the delay and default. The merits of the main petition cannot be used to cure an otherwise unexplained lack of diligence.

CONCLUSION

33. For the reasons aforesaid, this Court is of the view that the petitioners have failed to establish sufficient cause for the delay of 919 days in filing the restoration application. The explanation offered is general, unsubstantiated and inconsistent with the standard of diligence expected of a litigant, especially a corporate litigant engaged in parallel proceedings between the same parties. ***CRL.M.A. No. 1333/2025***, seeking condonation of delay, is accordingly dismissed.

34. As a necessary corollary, since the delay in filing the restoration application has not been condoned, ***CRL.M.A. No. 1332/2025*** seeking recall of the order dated 11.07.2022 and restoration of ***CRL.M.C. No. 1682/2011*** is also liable to be dismissed.

35. Pending application(s), if any, also stand(s) dismissed.

36. A copy of this judgment be sent to the learned Trial Court for necessary compliance and information.

**MADHU JAIN
(JUDGE)**

AUGUST 25, 2026/sd