

IN THE HIGH COURT OF DELHI

CM(M) No.429/2007

DDA Petitioner
! through: Mr. Gaurav Sarin, Advocate

VERSUS

\$ Vijay Pal Singh & Ors Respondents
^ through: Mr. M.Dutta, Advocate

% DATE OF DECISION: 07.03.2008

CORAM:

*** Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the parties.
2. DDA's grievance is to the order dated 13.10.2006 dismissing its application under Section 5 of the Limitation Act praying that delay in filing the appeal be condoned.
3. The decree against DDA is dated 6.2.2006. It has returned a finding in favour of the plaintiffs that the suit land ad-measuring 500 sq. yards as per site plan Ex.PW1/1 is comprised in Khasra No.399, Gujran Khadar, Ghonda, Bhajan

Pura, Delhi. Dismissing the application seeking delay to be condoned in filing the appeal, learned Appellate Judge has held that no sufficient cause has been shown entitling the DDA to have the delay condoned. It was noted that appeal was filed on 31.7.2006.

4. It is not in dispute that limitation for filing the appeal is 30 days.

5. It may be observed at the inception that I do not blame the learned Appellate Judge for the view taken for the reason the application filed under Section 5 of the Limitation Act is as vague as vagueness can ever be.

6. When the matter was heard by me on 22.3.2007 I had called upon learned counsel for DDA to show the relevant record to satisfy myself whether a mechanical decision was taken to file the appeal as also to satisfy myself as to how the file was processed by DDA after the Trial Court decreed the suit.

7. Notings in the file of the department had been shown to me. Photocopies thereof were filed. Only thereafter notice was issued on 22.3.2007.

8. Learned counsel for DDA states that he would instruct the department that in future whenever a situation of the kind reoccurs the departmental notings would be tabulated

and made a part of the application under Section 5 of the Limitation Act. Indeed, had this exercise been carried out before the learned Appellate Judge, a round of further litigation may have been avoided.

9. It is trite that sans negligence, there can hardly be ever a delay. Every delay would have some facet or the other of the negligence. Thus, one has not to look at negligence while considering delay to be condoned. Issue has to be considered whether a party was bona fide taking steps to prosecute the appellate remedy. Further, issue of condonation of delay has not to be construed pedantically i.e. one has not to look at each day's delay separately. It is settled law that issues of procedure have to be construed liberally to give effect to substantive rights of a party unless the compelling language does not so permit and there is a presumption that every party intends to avail of substantive rights and consciously does not do or refrain from doing something which takes away a substantive right. Further, where the litigating party is a corporate entity, the hierarchical structure in the organisation in the decision making process has to be considered. Further, where the litigating party is the Government or a statutory authority, public interest has also to be kept in view. Lastly if costs are good recompense for the

inconvenience caused to the opposite party said course should be chartered.

10. With this understanding of the law, relevant facts as emerging from the notings in the file of DDA have to be noted.

11. But before that, it has to be noted that as per the respondent i.e. the plaintiffs, suit land was comprised in Khasra No.399. According to DDA it was comprised in Khasra No.405 belonging to DDA.

12. The counsel engaged by DDA applied for a certified copy of the judgment and decree dated 6.2.2006 on 8.2.2006. He did so promptly. The certified copy was made available to the counsel by the registry in Tis Hazari on 28.2.2006. On 6.3.2006 learned counsel transmitted the same to the department. The file was received in the department on 9.3.2006. The Senior Law Officer of DDA who received the file on 9.3.2006 processed the same on the same date and required the Junior Law Officer to put up a note. The Junior Law Officer considered the suit record and put a note dated 21.3.2006 to the effect that the issue centers around a demarcation report by the Local Commissioner appointed by the Court. He further opined that land comprised in Khasra No.405 was acquired vide award No.9/73/74. He also opined, with reference to the witnesses examined that it was debatable

as to in which khasra the land was situated. No doubt, he concluded the opinion by recommending an appeal to be filed, but I note that there is a tendency in departments not to conclude issues even when the same are prima facie opined to be conclusive, lest allegations are made against the officer concerned.

13. Be that as it may, the Senior Law Officer to whom the file was marked penned a 3 page note dated 28.3.2006 opining that revenue record prima facie suggested that the decision of the learned Trial Judge was wrong. He opined that an appeal should be filed.

14. The competent authority, namely, the Deputy Chief Legal Advisor to whom the file was transmitted on 28.3.2006 had a re-look. He opined that it would be useless to file an appeal for the sake of it. He opined that a meeting be held with the Revenue Department for only if the Revenue Department of DDA could justify that the demarcation report was incorrect and the land in question was comprised in Khasra No.405, only then an appeal should be filed. Time was consumed thereafter to issue orders to various officers in the Revenue Department to join the meeting. On 28.4.2006, post meeting, the Deputy Chief Legal Advisor once again opined that, the issue not being brought out with clarity by his officers,

he was still of the view that appeal should be filed only if the administrative department established that the suit land falls in Khasra No.405. Thereafter, the revenue officers pointed out various documents for example the masavi, the field book etc. to justify their stand that the suit land was comprised in Khasra No.405. On 26.5.2006 the Deputy Chief Legal Advisor recommended that an appeal should be filed. On 1.6.2006 the Chief Law Officer concurred. Unfortunately, by this summer vacations had set in. The file which was sent to the counsel for filing the appeal on 16.6.2006 was addressed to by the counsel after the courts re-opened after summer recess. He noted on 15.7.2006 that he would be filing the appeal. Thereafter, time was consumed in drafting the appeal and allied applications. As noted above, the appeal was filed on 31.7.2006.

15. A perusal of the record, briefly noted above, shows that senior officers of DDA were taking a conscious decision whether there was evidence on record to sustain a challenge to the decision of the learned Trial Judge.

16. I am glad to note that no mechanical decision was taken. The file shows a participative and an interactive mind at each stage. The file shows that the concerned officer required the subordinate staff to satisfy him that a case was made out for filing an appeal. This bona fide exercise was

ultimately to the benefit of the plaintiff for the reason if the revenue officers could not have justified their stand, the competent authority would not have sanctioned the filing of the appeal.

17. The record of DDA shows a desire, at each stage, to prosecute the appellate remedy.

18. I hold that the delay is bona fide, occasioned by the desire of a public servant to satisfy himself with reference to the relevant record that indeed a case was made out to file an appeal.

19. Delay caused to the opposite party can always be recompensed with costs.

20. I thus dispose of the instant petition setting aside the impugned order dated 13.10.2006 passed by the learned Appellate Judge. I allow application filed by DDA under Section 5 of the Limitation Act by imposing costs in sum of Rs.5000/-. Delay in filing the appeal is condoned.

21. On costs being paid in Court on the next date of hearing to learned counsel for the respondents, the appeal would be restored and would be heard in accordance with law for the reason delay in filing the appeal stands condoned.

22. Parties are directed to appear before the learned Appellate Judge on 12.5.2008. On said date costs would be

tendered. A formal application may be filed by the appellant a week prior to 12.05.2008 so that on 12.5.2008 the appeal is retrieved from the record room and placed before the learned Judge.

23. It is hoped and expected that the learned Appellate Judge would try and dispose of the appeal as expeditiously as possible for the reason 2 years time has been consumed on preliminaries.

24. Copy of this order be supplied dasti to learned counsel for the petitioner.

March 07, 2008
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PRADEEP NANDRAJOG, J.