

* **HIGH COURT OF DELHI : NEW DELHI**

CM No.14111 of 2008 & FAO No.328 of 2008

% Judgment reserved on: 13th July, 2009

Judgment delivered on: 20th July, 2009

Govt. of National Capital Territory
of Delhi, represented by the
Executive Engineer Civil Building
Maintenance Div.M-321, Junction of
Ch.Braham Prakash Marg and
Tarachand Mathur Marg Junction
1-A, Battery Lane,
Delhi-110054.

....Appellants

Through: Ms.Jyoti Singh, Adv.

Versus

1.M/s Rabindra & Company
Office at F-22-B, Mangal Bazar,
Laxmi Nagar,
Delhi-110091.

2. Shri Paramjeet Singh
Sole Arbitrator
Office of City Business Centre,
3603, Shyam Bhawan,
Daryaganj,
New Delhi-110022.

....Respondents.

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment?

Yes

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| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

This order shall dispose of application under Section 5 of Limitation Act, 1963 (for short as 'Act') read with Section 151 CPC for condonation of delay of 54 days in filing the present appeal.

2. Appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act against the judgment dated 5th March, 2008 passed by Addl.District Judge, Delhi. Along with it, an application for condonation of delay has been filed.

3. In application, it is stated that delay is unintentional and bonafide and there is sufficient cause for condoning the delay. Impugned judgment was passed on 5th March, 2008. Counsel for appellant in trial court sent, the certified copy of judgment on 27th March, 2008. The judgment was being examined by the Department for challenging or otherwise.

However, restructuring of PWD commenced on 3rd May, 2007, due to which Divisions/E.Es were restructured and posted respectively. Jurisdiction of PWD-13 was partly transferred to CBMD, M3-21 and part of records were sent by E.E., PWD-13. This resulted in dis-location and dis-function in whole PWD.

4. Thereafter, file was moved for engagement of counsel who was engaged in June, 2008. Complete records were not handed over and discussion could not take place.

5. In mid-July, the matter was discussed between counsel and Department and some more papers and clarification were sought. Draft appeal was prepared on 12th August, 2008 and was sent for vetting. The same was returned on 28th August, 2008 to the counsel. Final appeal was handed over on 11th September, 2008 for signing and the same was filed on 17th September, 2008.

6. On 26th September, 2008, when case was listed before this Court, it was noted that as per office

report, there is 106 days delay in filing the appeal whereas, application seeks, condonation of delay of 54 days. Learned counsel for appellant sought time to file additional affidavit explaining the entire delay in filing the appeal. Accordingly, additional affidavit was filed.

7. In additional affidavit, it is stated that the restructuring of whole PWD commenced vide order dated 18th May, 2007, vide which Divisions were restructured and the Executive Engineers were posted. Some sub-Divisions were reconstituted vide orders dated 3rd May, 2007 and 22nd May, 2007. Due to restructuring, files were to be shifted. Some files were shifted from old Division to New Division, vide letter dated 2nd June, 2007. This process of shifting and handing/taking over of all the files continued till 4-5 months and, therefore, when judgment came, there was some confusion and it took time to collect the relevant documents to challenge the same. There is no intentional delay as whole Division was restructured and it was taking time to sort out the records.

8. It is contended by learned counsel for the appellant that since restructuring was being done in the PWD Department, that is why, there has been some delay in filing the present appeal. However, there was no intentional delay on the part of the appellant and since, appellant is a Government Department, it takes time for moving of the files from one Section to another, under these circumstances, delay may be condoned.

9. Impugned judgment was passed on 5th March, 2008 and as per appellant's own case as set out in the application for condonation of delay, counsel for appellant in trial court sent the certified copy of judgment on 27th March, 2008. Thus, on 27th March, 2008, certified copy of judgment was available with appellant. So, the appeal was to be filed within ninety days thereafter. But the same was filed on 17th September, 2008, that is, much beyond period of limitation. Section 5 of the Act read as under;

5. **“Extension of prescribed period in certain cases.-** Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for non preferring the appeal or making the application within such period.

Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

10. This Section enables a court to admit an appeal or an application after the expiry of prescribed period on “sufficient cause” being shown for the delay. Bare reading of this Section, goes to show that appellant has to show sufficient cause for not filing the appeal in the prescribed period.

11. The question which arise for consideration is as to whether the reasons mentioned in the application, as well as in additional affidavit, are “sufficient cause” for condonation of delay or not.

12. Appellant's case is that, due to restructuring of Department of PWD, appeal could not be filed within time. In para 5 of application it is stated that restructuring of PWD commenced on 3rd May, 2007 while in additional affidavit, it is stated restructuring of whole PWD commenced vide order dated 18th May, 2007 and some sub-divisions were reconstituted, vide orders dated 3rd May and 22nd May, 2007. In additional affidavit, it is also stated that due to restructuring, some files were sent from old Division to new Divisions vide letter dated 2nd June, 2007 and this process of shifting and handing/taking over the files, continued till 4-5 months.

13. As per facts given in the application as well as in additional affidavit, the restructuring was completed in the month of October/November, 2007, whereas, impugned judgment was passed on 5th March, 2008, that is, after about 4-5 months, when the restructuring were completed.

14. Thus, restructuring which had been completed much prior to the passing of the impugned judgment has got no bearing to the facts of the present case.

15. The appellant has to show as to why there is delay in filing this appeal when certified copy had been received by them as early as on 27th March, 2008. After receiving the certified copy of judgment, appellant slept over the matter and did not take any steps for filing the appeal, within the period of limitation. There is no explanation at all on behalf of appellant regarding delay in not filing the appeal within the period of limitation.

16. Surprisingly, till date, even certified copy of the impugned judgment has not been filed by the appellant. Vide application being CM No.14113/2008, appellant annexed the photocopy of the judgment and not the original certified copy, though appellant gave an undertaking to file original certified copy as and when the same was to be made available to him.

17. It is well settled that whether delay is to be condoned or not, is the discretion of the Court but the same has to be exercised judicially. Supreme Court in ***Ram Lal and Ors. v. Rewa Coalfields Ltd., AIR 1962 SC 361*** held that;

“It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by S. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.”

18. Similarly, in ***Oriental Insurance Co.Ltd. v. Kailash Devi & others AIR 1994 Punjab and Haryana 45***, it has been laid down that;

“There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence.”

19. Thus, the explanation given by appellant in application as well as in additional affidavit for not filing the appeal within period of limitation, is not at all convincing. The reasons assigned in the application and additional affidavit does not satisfy the test of “sufficient cause” as envisaged by Section 5 of the Act. Hence, no ground is made out for condoning delay, and application for condonation of delay, is dismissed.

FAO No.328/2008

Since application for condonation of delay has been dismissed, present appeal having been filed after the expiry of period of limitation too stands dismissed.

July 20, 2009
Bisht

V.B.GUPTA, J.