

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

+ **C.M. No. 926/2006 in CO. APP. 02/2006**

% **Judgment reserved on: 01.02.2010**
Judgment delivered on: 10.02.2010

HIMACHAL PRADESH FINANCIAL CORPORATION Appellant

Through: Mr. Naresh Sharma, Advocate.

versus

M/S. SAINSONS FIBRES (P) LTD. & ORS. Respondents

Through: Mr. Suryanarayana Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

% **MANMOHAN SINGH, J.** **JUDGMENT**

1. By this order we propose to decide the application for condonation of delay under Section 5 of the Limitation Act, 1963 (hereinafter referred to as "the Act") filed by the Appellant who has filed the present appeal against the impugned judgment/order dated 30.05.2005 passed by the Company Judge of this Court in C.A. No. 631/2005 in C.P. No. 440/1998.

2. The relevant dates for consideration of the application are as follows:

- a) The Appellant applied for a certified copy of the impugned judgment/order dated 30.05.2005 on 31.05.2005.
- b) The same was prepared and ready for delivery on 21.09.2005 and was obtained from the copying agency by the Appellant on 23.09.2005.

c) The present appeal was filed on 15.12.2005.

3. In the application, the Appellant in order to justify the delay, has averred that the matter was processed through various channels of the corporation, the details of which are as under:

- i.) A note of the case was put up by the Assistant General Manager (Legal) on 13.10.2005. The Chief General Manager sought approval to file the appeal both by HPFC (hereinafter referred to as the Appellant) and HPSIDC and the Managing Director was advised to seek the opinion of the Legal Advisor on 14.10.2005.
- ii) The Legal Advisor sent the case file on 20.10.2005 and the file was then put up to the Managing Director on 24.10.2005, at which time he directed the filing of an appeal.
- iii) Subsequently, on 29.10.2005, a decision was taken to engage a Senior Advocate.
- iv) The Assistant General Manager (Legal) was directed to go to Delhi and engage the services of counsel in the case. He contacted various advocates at Delhi on 08.11.2005 and 09.11.2005. The counsel was engaged and the case file was handed-over to him for the purpose of filing of the appeal.
- v) A draft was prepared and sent to HPFC for its approval and later on the draft was settled with the Senior Advocate and after his approval the same was filed.

4. Prayer is made in the application that there is a delay of 198 days in filing the present appeal which is sought to be condoned by this court.

5. The respondent no. 1 opposed the application filed by the Appellant *inter alia* on various grounds such as:-

- a) That the grounds for condoning delay are wholly untenable. The grounds set out for condonation of delay are inconsistent on the face of it and the same are false and incorrect.
- b) The explanation given by the Appellant in paragraphs 3 and 4 of the application is also denied by the respondent no.1.

6. The learned counsel for the Appellant has argued that the Appellant has a good case on merit and the impugned judgment/order is likely to be set aside if the matter is heard on merit. He argues that since the Appellant is a financial corporation, in view of the judgment of the Apex Court reported in the case of ***State of Haryana Vs. Chandra Mani and Ors.*** 1996 (3) SCC 132, this Court should condone the delay. In the referred case, the Supreme Court has taken the view that as regards the matters of government or where government corporations are involved, the Court should take a lenient view for the purposes of condoning delay and the Court should decide the matter on merit unless the case is hopelessly without merit. Paragraphs 9 and 11 of the said decision read as under:

“9. In *G. Ramegowda, Major v. Spl. Land Acquisition Officer* (1988) 2SCC 142, it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression “sufficient cause” must receive a liberal construction so as to advance substantial justice and generally delays in preferring the 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 delay.

11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court-be it by private party or the State-are barred by limitation and this Court generally adopts liberal approach in condonation of delay

finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the Community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise-is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. There fore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merit unless the case is hopelessly without merit."

7. A similar view was taken by the Supreme Court in the other cases referred to by the learned counsel for the Appellant, the details of which are given as under:

- i.) ***State of Bihar & Ors. Vs. Kameshwar Prasad Singh and Anr.*** (2000) 9 SCC 94
- ii) ***State (NCT of Delhi) Vs. Ahmed Jaan*** (2008) 14 SCC 582

iii) ***State of J & K & Ors. Vs. Mohmad Mazbool Sofi & Ors.***
(2009) 11 Scale 400.

8. On the other hand learned counsel for the respondent has argued that the application of the Appellant is totally misconceived as the Appellant has not given the correct facts in the application. His submission is that admittedly, the present appeal has been filed by the Appellant on 15.12.2005 on the basis of a typed copy of the judgment and order. He submits that nowhere it is mentioned that on 10.06.2005 the Appellant counsel on record had already received a true copy of the impugned judgment which was sent by this Court to the counsel for the parties concerned for compliance along with letter no. 7046/I. He argues that there are *mala fide* intentions on the part of the Appellant by not disclosing the true facts before this court as the Appellant had in its possession the true copy of the judgment in the month of June, 1995, hence there was occasion for the Appellant to wait for the certified copy, which in fact was not filed otherwise along with the appeal.

9. The learned counsel for the respondent No.1 has referred the judgment in the case of ***Municipal Corporation of Delhi Vs. Smt. Veena Mehta and Ors.*** reported in ILR 1977 I Delhi 364 paragraph 5 as regards the point of having knowledge of the copy, the same reads as under:

“In the instant case, there is no doubt that the petitioner Corporation was a party to the proceedings before Mr. J.D. Jain. It is also not disputed that Mrs. R.S. Bakshi was an advocate in those proceedings and he was the standing Counsel for the Corporation. Mr. Bakshi had, therefore, knowledge of the death of the

deceased. In the first appeal in the court below, it is again Mr. Bakshi who represented the petitioner Corporation. As such there is no doubt that the Corporation had acquired the knowledge through their agent, Mr. R.S. Bakshi in the course of the business transacted by him for the principal. The rule of law laid down in Daulal Phumra's case (71 Cal W.N. 31) is, therefore, not applicable to the facts of the instant case. I have no doubt that the knowledge of the death of the deceased must be attributed to the petitioner Corporation on the date its counsel received the information. The contention of the counsel, is rejected."

10. We agree with the Appellant as far as the proposition of law is concerned, and it is not in dispute that if in a case, sufficient cause for delay is shown by the applicant and particularly in cases where State or Government Corporations are the parties concerned, the Courts generally adopt a liberal approach in condoning the delay by showing certain amount of latitude. It is also a settled law that the expression "sufficient cause" should, therefore, be considered with pragmatism and with a justice-oriented approach rather than a hyper-technical approach, scrutinizing and demanding explanation for every day's delay in order to detect "sufficient cause". However, the Appellant has to satisfy *prima facie* some case of sufficient cause for condoning the delay in filing the application along with the appeal.

11. Let us now examine the present case in the light of the decisions referred by the Appellant. The following dates are relevant to refer for the purpose of deciding whether or not there is "sufficient cause" as referred by the Appellant in the application:

- a) The impugned judgment/order was passed on 30.05.2005.

- b) Application for obtaining the certified copy of the impugned order was filed on 31.05.2005.
- c) Certified copy was prepared and ready for delivery on 21.09.2005.
- d) The certified copy was delivered on 23.09.2005. The appeal was filed first time on 15.12.2005 on the basis of a typed copy.

12. The facts and relevant dates do not end here as it appears from the record that the certified copy in this matter was filed on 17.07.2009 though the same was admittedly received by the Appellant on 23.09.2005 from the Copying Agency.

13. No doubt that under Section 12 of the Act the requisite period for obtaining the certified copy is to be excluded for computing the period of limitation but the fact remains that the certified copy in the present matter was filed on 10.07.2009. Admittedly no exemption for filing the certified copy was obtained at the time of filing of the appeal. Therefore, it appears that there is a delay of about four years in filing the certified copy of the judgment which is the relevant period for the purpose of calculating the time to determine the point of delay.

14. Admittedly when the appeal was filed the certified copy was in possession of the Appellant but the appeal was filed on the basis of a typed/true copy. It has been rightly observed in the order dated 18.05.2009 passed by the Division Bench of this Court while considering the matter that there is no certified copy on record, therefore, the question of excluding the time period for obtaining the certified copy does not arise. Despite the order, the certified copy was filed only on

17.07.2009, after about two months. No explanation of delay has been furnished nor has any further application for condonation of delay been filed by the Appellant.

15. In case we take all relevant dates into consideration, we find that the Appellant has failed to assign any explanation of the following:

- a) There is no valid explanation given in the application about the receipt of the true copy of the impugned order from this Court along with the letter dated 10.06.2005.
- b) From the period between 23.09.2005 (when the certified copy was received by the Appellant) and 12.10.2005 (when the file was sent to AGM Legal) for the purpose of filing the appeal.
- c) From the period from 09.11.2005 (when the decision was taken to file the appeal) till 15.12.2005 (the date of filing of the appeal).
- d) No explanation is given by the Appellant for not filing the certified copy of the judgment along with appeal despite the same being in the possession of the Appellant. The certified copy was filed on 17th July, 2009 only when the Court on 18.05.2009 reminded the Appellant about the delay in filing the appeal. Even after filing the same, no application is moved by the Appellant for condoning the delay.

16. From the abovementioned facts, it appears to us that there are no valid reasons nor any sufficient cause made out for condoning such a long delay in filing the appeal as well as in filing the certified copy.

17. Let us now examine the case of the Appellant on merit. Brief facts of the case are:

- a) The respondent no.1 M/s. Sainsons Fibres (P) Ltd. filed an application for recall of order dated 04.03.2005 before the Company Court in C.A. No. 631/2005 in C.P. No. 440/1998 by which the bid of the respondent no.1 in respect of property situated at village Voel Jarnala, Tehsil Nalagarh, District Solan (HP) was accepted.
- b) Earlier to this, in an application moved by the HPFC/Appellant herein an order dated 05.12.2003 was passed permitting HPFC to issue the sale proclamation in respect of the property in question.
- c) As the sale certificate was not issued by the Appellant to the respondent no.1, vide order dated 08.07.2004 the Appellant was directed to issue the sale certificate. Meanwhile, another application was moved by the respondent no.1 stating that there was no definite description and location of the movable property and directions were sought from the court to be issued to the Appellant to issue the sale certificate for the purpose of execution of the sale deed of the property in question.
- d) When the respondent no.1 thereafter appeared before the Sub-Registrar for execution of the sale deed, it transpired to the respondent no.1 that an endorsement was made in the records maintained by the Sub-Registrar for payments to be made to HPSIDC, HPFC as well as Excise and Taxation Department, Himachal Pradesh.
- e) The respondent no.1 thereafter filed another application for deletion of these endorsements and notices were issued to these parties by this court on 01.10.2004 and an order was

passed that if the Tax Department has any claim, it can lodge the same before the Official Liquidator.

- f) Directions were also issued that as far as the registration of the sale deed in favour of the respondent no.1 is concerned, the Tax Department, HPSIDC and HPFC (Appellant) shall take necessary steps for getting their endorsement deleted to enable the respondent no.1 to obtain the sale registered in its favour.
- g) Thereafter an application was moved by the Tax Department being C.A. No. 1533/2004 for recall of the order dated 01.10.2004 on the ground that in view of the provisions of Himachal Pradesh General Sales Tax, 1968 the said department has the preferential rights to recover these dues even over and above the secured creditors and the preferential creditors as per the law laid down by the Supreme Court.
- h) Faced with the said situation and other hurdles, the contention of the respondent no.1 before the Company Court was that after depositing the entire sale consideration the respondent no.1 was left in a lurch, therefore, it had demonstrated the existence of prejudice before the learned Single Judge and stated that the respondent No.1 was not in a position to set up the industrial project in time to have the Sales and Income Tax benefit, therefore, the respondent no.1 was left with no option but to abandon the project.
- i) Therefore, the prayer was made that the auction be declared vitiated and be cancelled and money deposited be remitted back to the respondent No.1.

18. In the impugned order, the Court also referred to certain other events which took place prior to the grant of permission of this Court to the Appellant with regard to issuing the sale proclamation in question, which events were not disclosed by the Appellant when the order for sale proclamation was passed being mentioned as concealment of facts in the impugned order, resulting in acceptance of the respondent no.1's prayer.

19. By the impugned order, the sale dated 04.03.2004 was cancelled and directions were issued to the Registrar General to remit to the respondent no.1 a sum of Rs. 2,12,39,397/- (Rs. 2.65 crores – Rs. 52,60,603/-) along with interest due on the amount deposited by the respondent no.1 and Rs. 52,60,603/- to be remitted to the Official Liquidator. Permission was also given to the Tax Department to sell the property in question.

20. The said order has been challenged by the Appellant mainly on the ground that the respondent no.1 has sold the machinery and scrap for Rs. 58,63,750/- contrary to its own admission that the value of the machinery and other assets was Rs. 205 lac. The contention of the Appellant is that respondent no.1 has taken advantage for securing wrongful gain and it has sold the said machinery for a throwaway price without the permission of the court and no information was either given to the Sales Tax Department or to the Appellant in this regard. It is also contended that the Appellant was not aware of the filing of the application dated 08.12.2004 for recalling of the order as no notice was issued to the Appellant before hearing of the application. The Appellant came to know about the recall of the order dated 01.10.2004 when it received a letter

dated 20.04.2005 from its Advocate. One of the prayers made in the appeal is that the respondent no.1 be directed to deposit the balance shortfall along with the interest.

21. We have gone through the impugned order as well as the order dated 01.10.2004. It appears that when these orders were passed, the Appellant was duly represented by its advocates and their appearance has been duly recorded in the order dated 01.10.2004 and in the impugned order. Therefore, the grievance made by the Appellant that the Appellant had no knowledge about the order dated 01.10.2004 is incorrect.

22. Further, the learned Single Judge while disposing off the application of the respondent no.1 had adjusted the amount of Rs. 58,63,750/-, the money obtained by selling machinery and scrap by the respondent no.1 who had agreed before the learned Single Judge that the said amount of Rs. 52,63,603/- after paying the adjustment of the Sales Tax may be recovered by the Official Liquidator from the amount of Rs. 2.65 crores deposited by the respondent No.1 in this Court.

23. It appears from the records that since 1992 the factory was lying shut and as per the case of respondent no.1, the Plant & Machinery were becoming junk due to non user, thus after a period of 12 years the said Plant & Machinery, whether they were scrap or not, had been sold for a sum of Rs. 58,63,750/-. The said sale was conducted after obtaining approval from the Sales Tax Authority. The certificate of the Inspector is already placed on record. The other factor which is important in the matter is that when the appellant himself published an advertisement in

“The Tribune” on 13.02.2004, pertaining to the very Plant & Machinery referred to above, the reserve price and earnest money of the Plant & Machinery was fixed at Rs. 15 lac by the appellant. As far as the letter dated 31.08.2008 is concerned where the respondent no.1 has made the admission that the price of the said Plant & Machinery was Rs. 205 lacs, the said letter has not been relied upon by the Appellant nor has the same been filed earlier as per the submission of the respondent no.1. Further, it is not in dispute that when the application filed by the respondent no.1 being C.A. No. 631/01 was considered, the Appellant was aware about the same. The Appellant even filed the counter to the said application.

24. In the impugned judgment the learned Single Judge has observed that on 05.12.2003 when the sale proclamation was issued by the Appellant, he suppressed the fact that earlier the Sales Tax Department of the Government of Himachal Pradesh had already attached the property being the subject-matter of the sale. Some relevant dates which are necessary in this regard are:

- i.) In March 1999, HPFC took possession of the factory and premises of M/s. Tishu & Fibre Ltd., the company in liquidation.
- ii.) On 21st February, 2001 the Tax Department of the State of Himachal Pradesh issued attachment orders in respect of the property belonging to M/s. Tissue & Fibre Ltd. which was taken possession of by HPFC.
- iii.) On 20th April, 2001, the District Collector, Solan allowed sale of the said property.
- iv.) On 14th May, 2001, a sale proclamation was issued.

- v.) On an application made by HPFC for cancellation of the said sale the District Collector of Solan stayed the sale.
- vi.) On 14th March, 2002, the application filed by HPFC was dismissed and the stay order was vacated.
- vii.) On 2nd June, 2003, the Tax Department issued a second sale proclamation.
- viii.) On 26th June, 2003, Himachal Pradesh Government published the second sale proclamation.

25. The above said details and events were admittedly not disclosed by the appellant at the time of obtaining the order of sale on 05.12.2003 despite having full knowledge of the attachment orders issued by the Tax Department and the proclamation of the sale issued by the Himachal Pradesh Government. Had these facts been disclosed by the Appellant before the Company Judge, the order for sale dated 05.12.2003 ought not to have been passed. As a matter of fact, it appears on the record that the entire confusion which has occurred in the matter is because of the Appellant due to its non-disclosure of events and particulars at the time of passing of the order of sale by the Company Court. The learned Single Judge has in fact passed the impugned judgment after considering the entire gamut of the dispute between the parties. The learned Single Judge in the impugned order after deducting a sum of Rs. 6,03,047/- which was paid to the Sales Tax Department out of the total sale consideration of Rs. 58,63,750/- has rightly directed that the remaining balance of Rs. 52,60,603/- be retained with the Official Liquidator.

26. Keeping in view the aforesaid facts and the totality of circumstances, we do not find any infirmity in the impugned judgment

and the present appeal is liable to be dismissed on merit as well as on the point of delay. C.M. No. 926/2006 also stands disposed off.

27. No costs.

(MANMOHAN SINGH)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

February 10, 2010
Dp/jk