

02.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment 20th August, 2010

+ RFA NO 352/2009

DELHI DEVELOPMENT AUTHORITY Petitioner
Through : Ms. Geeta Mehrotra, Adv.
versus

M/S ADDHAR STUMBH Respondent
Through : Mr. Vivekanand, Adv.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

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

+ CM NO.14009/2010.

1. This is an application filed by the appellant under Section 5 of the Limitation Act seeking condonation of 233 days delay in filing the present appeal.
2. In this case, judgment and decree was passed by learned Additional District Judge on 23.8.2008. The present application does not state as to when certified copy of the decree were applied. The grounds for condonation of delay are set out in paragraphs 4 to 6 of this application, which are reproduced below:
 - "4. That after receiving the certified copy of the Judgment, the file was sent to AE III for his comments on 27.10.2008.
 5. That immediate action and necessary follow up of the case at different stages has been done by the Divisional staff after receipt of the file from the sub-division. The decision was finally taken for filing the appeal on 28.7.2009 and the case was entrusted to the present counsel for the appellant.

6. That thereafter after receiving the case files and certified copy, the counsel for the appellant prepared the appeal and the same is being filed. There is about 233 days delay in filing the appeal. The appellant took time because the file goes through proper channel to take the decision as to whether an appeal is to be filed."

3. I have heard counsel for the parties and given my thoughtful consideration to the matter. In the case of **Love Kumar Sethi Vs. M/s Deluxe Stores & Ors.**, reported at 145 (2007) DLT 275 (DB), wherein the delay of 146 days were not condoned as the appellant had failed to provide the necessary documents in support of the grounds for delay. The Division Bench has held that the appellant has not satisfied the Court regarding there being sufficient cause as the facts must inspire confidence. In the case of **Ramey vs. M.C.D.**, reported at 134 (2006) DLT 106 (DB), wherein delay was not condoned and it was held as under:

4. Learned Counsel for the appellant has drawn our attention to two judgments of the Supreme Court, namely, **Collector, Land Acquisition, Anantnag and Anr. v. Mst. Kastiji and Ors.**, reported as AIR 1987 SC 1353 and **Balakrishnan v. M. Krishnamoorthy** reported as VII (1998) SLT 334 = IV (1998) CLT 63 (SC) = 1998 (7) SCC 123 wherein it has been held that the court should adopt a liberal approach while disposing of applications for condensation of delay and that the word "sufficient cause" under Section 5 of the Act should receive a liberal construction so as to advance the cause of substantial justice.
5. We have perused the aforementioned judgments. There is no doubt that it is settled law that as against a technical and pedantic approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits.
6. At the same time, we would also like to refer to a judgment of the Supreme Court in the case of **Salil Dutta v. T.M. and M.C. Private Ltd.** reported as JT 1993 (4) SC 528, wherein, while distinguishing the decision in **Rafiq and Anr. v. Munshilal and Anr.** reported as AIR 1981 SC 1400, it was observed as below:

The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex- parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

7. In the light of the above and in the facts and circumstances of the present case, we are not persuaded to exercise our power of condensation of delay in favor of the appellant. We are not inclined to condone the delay of 1203 days in filing the present appeal as the appellant has failed to furnish any satisfactory Explanation in his application warranting condensation of delay. On the contrary, his application does not inspire any confidence. Admittedly, no complaint has been filed against the Advocate who was allegedly not diligent in pursuing the litigation on behalf of the appellant. Putting the entire blame upon the Advocate and trying to portray as if the appellant was illiterate and poor and hence totally unaware of the nature and significance of the pending proceedings, is quite unacceptable, particularly in view of the fact that the appellant has entered into a contract worth Rs. 20 lacs with the MCD and is, therefore, not only business savvy and worldly wise, but quite capable of taking care of his commercial interests. He is not a rustic ignorant villager hailing from the backwaters who has no knowledge of the legal proceedings and the court procedures.
4. In the case of **P.K. Ramachandran Vs. State of Kerala & Anr.** (1997) 7 SCC 556, the Supreme Court has held that an essential pre-requisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.
5. In the case of ***Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and Another,***

reported at (2010) 5 Supreme Court Cases 459, the Apex Court has held as under:

- “14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.
15. The expression “sufficient cause” employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate – *Collector (L.A.) v. Katiji*, (1987) 2 SCC 107, *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123 and *10 Vedabai v. Shantaram Baburao Patil* (2001) 9 SCC 106.
16. *In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay - G. Ramegowda v. Spl. Land Acquisition Officer* (1988) 2 SCC 142, *State of Haryana v. Chandra Mani* (1996) 3

SCC 132, State of U.P. v. Harish Chandra (1996) 9 SCC 309, State of Bihar v. Ratan Lal Sahu, (1996) 10 SCC 635, State of Nagaland v. Lipok Ao (2005) 3 SCC 752, and State (NCT of Delhi) v. Ahmed Jaan (2008) 14 SCC 582.

6. The facts of this case are to be considered on the touchstone of the broad principles which have been laid down by the Supreme Court of India while considering the present application for condonation of delay. The conduct of the appellant in the present case shows total callousness and negligence. While dealing with an application for condonation of delay under Section 5 of the Limitation Act, the Court must bear in mind two important considerations. Firstly, the expiration of limitation for filing an appeal gives rise to a legal right to a decree-holder to treat the decree as binding between the parties and this right should not be lightly disturbed. Second, if sufficient cause is shown for condonation of delay, the delay should be condoned. It has been repeatedly held by the Supreme Court of India that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice. In the same breath, it has been held that the discretion should be exercised when there is no negligence or inaction nor want of bona fides imputable to the appellant the Court must be satisfied that there was due diligence on the part of the appellant.
7. Bare reading of the application shows the extremely casual manner in which it has been drafted. Even if a liberal view is taken in the matter, I am unable to find any good ground for condonation of

delay and application which does not give any worthwhile explanation, cannot be entertained. The application for condonation of delay does not inspire any confidence. Reasons for delay have been set out in para 5 of the application for condonation of delay, which reads as under:

“5. That immediate action and necessary follow up of the case at different stages has been done by the Divisional staff after receipt of the file from the sub-division. The decision was finally taken for filing the appeal on 28.7.2009 and the case was entrusted to the present counsel for the appellant.”

8. Para 5 of the application does not disclose any ground which can be termed as sufficient to condone the delay in filing the appeal. The application is accordingly dismissed.

+ RFA NO.352/2009.

9. In view of the order passed above in condonation of delay application, the appeal stands dismissed. CM No.14010/2009 also stands dismissed.

August 20, 2010
'msr'

G.S. SISTANI, J.