

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

% *Date of Judgment: 01.11.2011*

+ **CM(M) 1278/2011**

NEW OKHLA INDUSTRIAL
DEVELOPMENT AUTHORITY Petitioner
Through: Mr. H.L. Raina, Advocate.

versus

KM PARAMJIT & ANR Respondents
Through: Mr. I.V. Raghav and Mr. S.B.
Raghav, Advocates for R-1.

+ **CM(M) 1279/2011**

NEW OKHLA INDUSTRIAL
DEVELOPMENT AUTHORITY Petitioner
Through: Mr. H.L. Raina, Advocate.

versus

VINOD KUMAR MITTAL & ANR Respondents
Through: Mr. I.V. Raghav and Mr. S.B.
Raghav, Advocates for R-1.

+ **CM(M) 1280/2011**

NEW OKHLA INDUSTRIAL
DEVELOPMENT AUTHORITY Petitioner
Through: Mr. H.L. Raina, Advocate.

versus

RAJESHWAR PRASAD & ANR Respondents
Through: Mr. I.V. Raghav and Mr. S.B.
Raghav, Advocates for R-1.

+ **CM(M) 1281/2011**

NEW OKHLA INDUSTRIAL
DEVELOPMENT AUTHORITY Petitioner
Through: Mr. H.L. Raina, Advocate.

versus

NEW ASHOK NAGAR BLOCK E & ED
DEV ASSOCIATION & ORS Respondents
Through: Mr. Robin George , Mr. Satish
Kumar Bhatia and Mr. Hukum
Singh, Advocates for R-1, 3, 4,
6 to 15, 19 & 20.
Mr. I.V. Raghav and Mr. S.B.
Raghav, Advocates for R-16,
17, 18 & 21.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 11.03.2011 vide which the application filed by the appellant under Section 5 of the Limitation Act seeking condonation of delay of 78 days in filing the appeal had been dismissed.

2. Record shows that a suit for permanent injunction and
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declaration had been filed by the plaintiff against the two defendants; the prayer in the suit was that the defendants i.e the New Okhla Industrial Development Authority as also the DDA be restrained from abolishing the suit property and interfering in the peaceful possession of the property. On the pleadings of the parties issues were framed as the main bone of contention was as to whether the property falls in Noida or in Delhi. The Trial Court vide judgment dated 01.05.2010 had decreed the suit in favour of the plaintiff holding that the suit property falls within Illaqa Shahdara, Delhi. Appeal against the aforementioned judgment was filed by the petitioner i.e. the New Okhla Industrial Development Authority after a delay of 78 days. In the application under Section 5 of the Limitation Act the delay has been explained in para Nos. 2 and 3.

3. It is not in dispute and as it is borne out from the record that the certified copy of the judgment and decree dated 01.05.2010 had been applied for on 07.05.2010 which was obtained on 17.05.2010; appeal was to be filed till 17.06.2010; it was filed belatedly for the reason that the earlier counsel who was dealing with the matter had been changed; new counsel had requested the earlier counsel for handing over the complete case

file which was given to the new counsel only on 26.06.2010; the
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inspection report dated 07.01.2005 was found missing which was to be obtained before the appeal could be filed; certified copy of these papers were made available only on 28.07.2010; this was the explanation furnished by the petitioner for the delay in filing the appeal.

4. The words 'sufficient cause' as appearing in Section 5 of the Limitation Act have to be construed liberally so as to advance substantial justice to the parties; a litigant should not be shut out at the threshold and be deprived of the opportunity to be heard on merits; delay may be condoned provided that the applicant is able to furnish a sufficiently justifiable explanation for his delay. No hard and fast rule can be laid down. Each case has to be decided on its factual matrix. Unless there is lack of bona fides or a total inaction or negligence on the part of the litigant, the protection of Section 5 should not be deprived to a party; mistake of a counsel may also amount to a sufficient cause for condonation of delay; it is always a question of fact.

5. In the instant case, keeping in view the explanation furnished by the learned counsel for the petitioner in the application which was duly supported by the affidavit of the Tehsildar of the petitioner who had stated that this application had been drafted on the basis of the relevant record, the

justification furnished by the petitioner for not filing the appeal within time has been explained. The petitioner should not be declined a hearing on merits for the fault which at best is attributable to his counsel. The impugned order is accordingly set aside. Delay in filing the appeal is condoned.

This order is passed subject to payment of Rs. 5,000/- as costs. The parties to appear before the First Appellate Court on 15.11.2011 and the Trial Court shall proceed to dispose of the appeal on its merits.

INDERMEET KAUR, J

NOVEMBER 01, 2011

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