

IN THE HIGH COURT OF DELHI AT New Delhi

C.M.(M) No.1031/2010

Date of Decision: 07.4.2011

Nusarat Tabassum

..... Petitioner
Through: Mr. Chandra
Shekhar with Mr. Saurabh
Upadhyay, Advs. for the
petitioner.

Versus

N.D.M.C. and Another

..... Respondents
Through: Mr. Nilav Banerjee
with Mr. Arpan Behl, Advs. for
Mr. Manoj K. Singh, Adv. for
the respondents

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be
allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in
the Digest? Yes

S. L. BHAYANA, J.

The present petition under Article 227 of the Constitution of India has been filed by the petitioner against the impugned order dated 5.4.2010 passed by the Trial Court, wherein the Trial Court has condoned the delay in filing an appeal in favour of the respondent.

2. The brief facts of this case are that the shop No.195, Palika Bazar, Cannaught Place, New Delhi was allotted to the 2nd respondent by the 1st respondent Council on license basis.

Subsequently the petitioner joined the 2nd respondent in terms of partnership deed dated 2.5.2003. However, the partnership suffered dissolution in view of the dissolution deed dated 25.8.2003 according to which the petitioner remained in occupation of the shop in question with full knowledge and notice of the respondent Council. The shop was regularized by the 1st respondent in the name of the petitioner. Since the term of the license expired, the respondent (NDMC) approached the Estate Officer for seeking eviction of the petitioner and respondent No.2 from the premises in question on the ground that they are occupying the premises unauthorisedly.

3. The Estate Officer issued show cause notice under section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act on 13.7.2005. The respondent council contested the matter and the same was rejected by the Estate Officer vide order dated 7.9.2009.

4. Thereafter, the respondent challenged the same by filing P.P Appeal on 14.1.2010 before the District Judge after the delay of about 3 months. The reason for the delay is explained as the file had been misplaced by the clerk of the counsel Mr. Manoj K. Singh and could be traced on 8.1.2010 in the bunch of files in which writ petition pertaining to Gole Market were listed before the High Court.

5. I have heard the arguments advanced by the counsel for the parties and perused the record carefully. The contention of the petitioner herein is that the petitioner has been subjected to gross prejudice in terms of allowing the application for condonation of delay by the Learned District Judge without applying his mind. There is no sufficient explanation given by the counsel for the respondent for the delay in filing of the appeal. Learned counsel for the petitioner has relied upon N.D.M.C. Vs. Airtech (P) Ltd., **1998 IV AD (Delhi) 221** wherein the Division Bench of this Court had dismissed the appeal of the respondent on the ground of delay. In that case, the Court has observed that the delay cannot be condoned in the cases where the public authority has not disclosed any cause and the delay cannot be condoned on mere asking.

6. On the other hand counsel for the respondent has asserted that the respondent has not intentionally caused delay in filing the appeal. The concerned officer perused the file and made a brief note of the case and placed it before the concerned authority for advice on 16.9.2009. Thereafter, the file was processed through various channels and permission was accorded to file the appeal and the file was marked to Mr. Manoj K.Singh, special counsel for NDMC for preparing an appeal on 15.10.2009.

7. It was submitted by learned counsel for respondent that due to inadvertence of the clerk of the counsel, the file was misplaced. The file was found in the bunch of files of writ

petitions pertaining to Gole Market listed before the High Court on 8.1.2010. Along with the application of condonation of delay the affidavit of Deputy Director Estate, N.D.M.C. was also filed. Learned counsel for the respondent has relied upon State (NCT of Delhi) Vs. Ahmad Jaan, **JT 2008 (10) SC 179**, wherein the Supreme Court has observed that the term sufficient cause should be considered with pragmatism in justice oriented approach rather than technical detection of sufficient cause for explaining everyday's delay.

8. In view of the submissions made by the counsels for the parties, I am of the opinion that refusal to condone the delay would result in grave miscarriage of justice. It is clear from the explanation given by the counsel for the respondent that the mistake committed by the counsel was bonafide and it was not tainted by any mala fide motive. The order passed by the Trial Court is well reasoned order. The respondent has sufficiently explained the reason for delay in filing the appeal. The Supreme Court in case of State (NCT of Delhi) Vs. Ahmad Jaan (supra) has held that:-

"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. Therefore, 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 everyday'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 merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorize the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

9. In view of the ratio laid down by Supreme Court in the case of State (NCT of Delhi) Vs. Ahmad Jaan (supra), I find no infirmity in the order passed by the Learned Trial Court.
10. The petition is without any merit and the same is, therefore, dismissed.

S.L. BHAYANA, J

April 07, 2011