

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

+ **RFA No. 181/2012**

% **20th April, 2012**

GOVT OF NCT OF DELHI & ORS Appellants

Through : Mr. N. Waziri, Standing Counsel
(Civil) with Mr. Shoaib Haider,
Advocate.

versus

SM BHASKER & ANR Respondents

Through : None

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.6722/2012(for exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM 6720/2012 (delay)

1. By this application the appellants seek condonation of delay of as many as 745 days i.e. over two years, in filing of the appeal against the *RFA No.181/2012*

impugned judgment of the trial court dated 09.03.2010.

2. By the impugned judgment trial court decreed the suit of the respondent/plaintiff which was filed for damages of ₹4,50,000/- for an amount of ₹1,50,000/- alongwith interest @9% p.a. pendente lite and future interest. The trial Court in the impugned judgment records that the respondent/plaintiff was unfortunately repeatedly subjected to departmental enquiries, however as many as three departmental enquiries against the respondent/plaintiff discharged him from any alleged misconduct of inaction during the riots. When a fourth enquiry was to be instituted, the respondent/plaintiff challenged the enquiry proceedings before the Central Administrative Tribunal (CAT) which quashed the initiation of enquiry. Challenge to the order of CAT was dismissed by this Court. Further challenge in the Supreme Court by the appellants to the order of this Court was dismissed by Supreme Court by making following observations against the appellants:

“Heard the learned counsel appearing for the Commissioner of Police. On examining the facts of the case, we are shocked to find that the Commission of Police has been trying to start a de-novo inquiry against the concerned officer. The alleged delinquency stated to have been taken place some time in the year 1984. On an inquiry being

directed, the inquiry was held, and ultimately the delinquent was exonerated in May 1985. In October 1985, another inquiry was ordered. That inquiry was held, and the officer was exonerated. A criminal case was filed, and in the criminal case also the prosecution failed to establish the charge, and he was acquitted. Even in the last inquiry, that was ordered, the inquiring officer exonerated him of all the charges. In this state of affairs, it is unthinkable that the power under Rule 15(1)(a) Central Civil Services (Classification, Control and Appeals) Rules, 1965 could have been invoked to hold a fresh inquiry against the delinquent. To us, it appears that the concerned officer is being prosecuted unnecessarily. We therefore dismiss this Special Leave Petition.”

(underlining added)

3. Since the enquiries against the respondent/plaintiff were quashed, the respondent/plaintiff filed the subject suit of defamation, malicious prosecution, loss of promotion benefits etc. claiming ₹4,50,000/- alongwith interest. In a case such as the present, the averments which have been made seeking condonation of delay for a huge period of 745 days are only as under:

5. That on 04.08.2010, the counsel who was handling the matter earlier opined that the Department should file an appeal before the Hon’ble Delhi High Court and consequently on 11.08.2010 the Commissioner of Police expressed their desire to file the appeal expeditiously.

6. That the Office of the Deputy Commissioner of Police (Vigilance) approached the Office of the Deputy Secretary (Home), Govt. of NCT of Delhi for appointment of a Counsel for filing the appeal. This step was initiated on

11.08.2010.

7. That the matter was pursued by the Police Department with the office of the Deputy Secretary (Home) on various occasions i.e.16.09.2010, 23.09.2010 and 05.10.2010. However, till that date no Government Counsel was appointed.

8. That reminders were sent on 11.10.2010, 11.11.2010 and 18.11.2010 for appointment of the Counsel and opinion on filing the appeal.

9. That vide communication dated 05.12.2010, the Joint Secretary (Home) informed the Office of the Deputy Commissioner of Police (Vigilance) that the matter has been examined and it has been decided that an appeal should be preferred against the impugned Judgment-cum-Decree dated 09.03.2010 on the ground that the learned Trial Court had not adjudicated on these issues with regard to the alleged harassment.

10. That thereafter, the matter was processed by the Department for appointment of a Government Counsel and a regular follow up was done on 06.01.2011 and 08.03.2011.

11. That finally a BTF was issued on 17.03.2011 in the name of Shri Sushil Dutt Salwan, Addl. Standing Counsel, Govt. of NCT of Delhi to file the appeal.

12. That on 25.03.2011, Sub-Inspector, Rohit Srivastava met the Counsel in his chambers in the Delhi High Court. Copy of the BTF was given to the Counsel. The Sub-Inspector, Rohit Srivastava was requested by the counsel to furnish the copy of the entire record. On 15.05.2011 a copy of the plaint as well as the impugned Judgment-cum-Decree dated 09.03.2010 was handed over by the said Sub-Inspector, Rohit Srivastava. On a perusal of the same, the counsel requested the Sub-Inspector that this record was not sufficient for the purpose of filing appeal and hence requested for the entire record of the suit which included the pleadings, documents and evidence.

13. That the aforesaid requisition of the counsel was conveyed by the Sub-Inspector, Rohit Srivastava to S.I.

Anant Ram with instructions to obtain the said record from the previous counsel or the concerned department, handling the case.

14. That the said S.I. Anant Ram made certain enquiries, however, was unable to trace the record. Before he could proceed in the matter further, he was transferred from the PS Krishna Nagar.

15. That thereafter, the aforesaid requisition of the Government counsel was conveyed by the Sub-Inspector, Rohit Srivastava to S.I. Kamtra Prashad with request to follow up the matter with the concerned department or the previous counsel and obtain the record from the office of the previous counsel or the concerned department of Delhi Police.

16. That despite efforts, the matter could not be pursued, in absence of the said record, either by the PS Krishna Nagar or the counsel.

17. That thereafter, the said Sub-Inspector, Rohit Srivastava was assigned to the 26th Day Parade and Police Raising Day and hence he was dislocated from the PS Krishna Nagar for a period of about 2 ½ months from December till 03.03.2012.

18. That on 27th February 2012, the Department received a notice of an Execution Petition filed by Respondent No.1 against the appellants/defendants and respondent No.2. Immediately on receipt of the said notice, the SHO, PS Krishna Nagar discussed this matter with Sub-Inspector, Rohit Srivastava on 4th March 2012, after he returned to duty on 03.03.2012.

19. That on 10.03.2012, the SHO PS Krishna Nagar called the Govt. counsel and requested him to file the appeal. The SHO was informed that in absence of any documents, no appeal could be preferred and that this was already brought to the notice of the Department earlier. It was submitted by the SHO that despite all endeavours of the Department, neither the file could be traced from the office of the previous counsel who was handling the suit in the Trial

Court nor the file is available in the Police Station and there are no traces thereof in the concerned department. The SHO was advised by the Govt. counsel that they should immediately inspect the file and obtain certified copies.

4. What is required under Section 5 of the Limitation Act, 1963 is a sufficient cause and not a narration of facts. Sufficient cause means adequate reasons which prevent filing an appeal i.e. reasons beyond the control of a person. Averments of facts with regard to taking of opinions and passing of file from one hand to other, are the only averments made in the application under Section 5 of the Limitation Act and which do not qualify to be a sufficient cause. More importantly, if certified copies could have been applied much later on 10.03.2012, surely, they could also be applied for much earlier so that the appeal could have been filed without any delay or filed with some reasonable delay.

5. It has been held by Hon'ble Supreme Court in a catena of judgments under Section 5 of the Limitation Act that though certain leverage is allowed to government, however, there cannot be gross delays or negligence.

6. In the facts of the present case, I do not find that a sufficient cause has been made out for a condonation of delay.

7. CM is dismissed.

RFA No. 181/2012 & CM No. 6721/2012(for stay)

Since the application for condonation of delay is dismissed, the appeal and application for stay are accordingly dismissed.

VALMIKI J. MEHTA, J

APRIL 20, 2012
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