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

+ LA.APP. 265/2012

RK JETELY (DECEASED) & ORS Appellants
Through: Mr.B.D.Sharma, Advocate

versus

UNION OF INDIA & ANR Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
05.11.2012

C.M. No.18640/2012 (Condonation of delay) & LA. App. No. 265/2012

Though the delay is of nearly three years, to be precise of 1080 days in filing the accompanying appeal, but the burden to explain the delay is onerous because applicants/appellants are educated persons.

The explanation for delay furnished is that applicants/appellants were not aware of filing of reference petition seeking enhancement of compensation nor of impugned judgment of 23rd November, 2009 and they had learnt about it, in first week of July, 2012 after President of *Army Officers Association* had inquired from applicants/appellants about the status of their case seeking enhancement of compensation in respect of their land which was acquired vide Award No.30/2002-2003.

According to learned counsel for applicants/appellants, President of *Army Officers Association* was pursuing the case for enhancement of

compensation before the Reference Court and since the delay occasioned is neither intentional nor deliberate, therefore it ought to be condoned as the case of applicants/appellants is covered by the decision of this Court titled *Ranbir Sharma vs. Union of India & Anr.*, 187 (2012) DLT 781.

It is a matter of record that claimant – *R.K. Jetley* had left this world in July, 2010 whereas impugned judgment was delivered in November, 2009 and that period of limitation to file the appeal had already lapsed during the life time of claimant – *R.K. Jetley*. It is quite unlikely that applicants/appellants would not be knowing about reference petition being filed to seek higher compensation.

Since this appeal has been filed after enhancement of compensation in respect of acquisition in question in the appeals of similarly placed claimants in case titled *Ranbir Sharma* (supra), therefore, to dispel the impression that belated filing of appeals like the instant one is nothing but speculative litigation, applicants/appellants were required to meticulously explain as to how they had learnt about filing of reference petition by claimant – *R.K. Jetley*. Strictly speaking, applicants/appellants cannot be called upon to explain the delay from February till July, 2010, but certainly they are required to explain delay from August, 2010 till October, 2012.

Apex Court in *Lanka Venkateshwarlu (D) by LRs vs. State of A.P. & Ors.*, 2011 (III) AD (SC) 237, has reiterated the parameters within which the discretion to condone the delay is to be exercised, by precisely observing that the concepts of ‘liberal approach, justice oriented approach, substantial justice’ cannot be employed to jettison the substantial law of limitation, especially in cases where the Court finds that there is no justification for the delay occasioned and that while considering applications for condonation of

delay, the courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in systematic manner, informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

This Court is conscious that pedantic approach is not to be adopted in such like matters but at the same time, ground realities are to be kept in mind, i.e., not to encourage speculative litigation. The parameters governing condonation of delay, as highlighted by Apex Court in *Balwant Singh vs. Jagdish Singh & Ors.*, (2010) 8 SCC 685 needs no reiteration. The recent trend of judicial pronouncements is to seek stricter compliance of the law of limitation as equities have to be balanced because burden of paying enhanced compensation cannot be passed on to the beneficiaries/third parties at any time.

Upon testing the explanation furnished for the delay occasioned, on the touchstone of logic, it becomes evident that the explanation for the delay occasioned is implausible on the face of it because, if President of *Army Officers Association* had been looking after the reference petition of claimants including that of *R.K.Jetley*, then there was no occasion for the President of the aforesaid Association to have inquired from applicants/appellants in July, 2012 about the status of the petition filed by *R.K.Jetley* to seek enhancement of compensation.

The aforesaid dictum of the Apex Court in *Lanka Venkateshwarlu* (supra), has been followed by this Court in LA APP No. 617/2011 *Satbir Singh vs. Union of India & Ors'* rendered on 30th November, 2011 and LA
LA. App. No. 265/2012

APP No. 15/2012, *P.D. Goel vs. Union of India & Ors.* rendered on 20th January, 2012, while refusing to condone delay of varying periods to curb the recent unhealthy trend of speculative litigation. Finding instant matter, to be one of the same species, I find no justification to take a different view than the one taken in the afore-noted decision of *Satbir Singh* (supra) as the delay occasioned in the case in hand does not appear to be bonafide one. The vice of speculative litigation is apparent on the face of it. Hence, while refusing to condone the delay, I dismiss the accompanying appeal as barred by time.

In view of the aforesaid, the application and appeal are dismissed *in limine*.



(SUNIL GAUR)
JUDGE

NOVEMBER 05, 2012
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