

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

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Date of decision: 30th October, 2012

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LPA No.714/2012

RAJ KUMAR GUPTA

..... Appellant

Through: Mr. Subhiksh Vasudev, Adv.

Versus

**INDIA TOURISM DEVELOPMENT
CORPORATION & ANR.**

..... Respondents

Through: Mr. Sushant Kumar & Ms. Shikha
Singh, Advs. For ITDC.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The counsel for the respondent caveator appears and we have heard the counsels finally on the appeal.
2. This intra-court appeal impugns the order dated 20th September, 2012 of the learned Single Judge of dismissal of W.P.(C) No.4104/2012 preferred by the appellant. The said writ petition was preferred impugning the order dated 23rd January, 2012 of the District Judge exercising powers as an Appellate Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act) dismissing the appeal preferred by the appellant against the order dated 14th July, 2010 of the Estate Officer of the respondent directing the appellant to pay a sum of Rs.10,85,640/- along with

interest @ 18% per annum in case the said amount was not paid within 30 days from the order.

3. The respondent had approached its Estate Officer on 2nd November, 2007 for recovery of the aforesaid amount from the appellant due on account of the rooms booked by the appellant in the hotel of the respondent between 7th December, 2005 and 15th December, 2005. The appellant in the memorandum of this appeal admits receipt of notice of the proceedings before the Estate Officer and of having participated in the said proceedings till May, 2008 and having objected to the jurisdiction of the Estate Officer; the appellant further admits having thereafter stopped participating in the said proceedings and after several dates of *ex parte* hearing wherein ultimately the order dated 14th July, 2010 of recovery of amount aforesaid from the appellant was passed. The said order itself records copy thereof having been sent to the appellant. The appellant has not stated that the address at which the copy of the order is recorded to have been sent is not of the appellant or is incorrect. The appellant however sat quite. It appears that the respondent approached the SDM for recovery of the amounts aforesaid from the appellant as arrears of land revenue but the SDM did not take any action. The respondent in the circumstances filed W.P.(C) No.7638/2011 in this Court seeking direction to the SDM to recover the amount from the appellant as arrears of land revenue. The appellant was also impleaded as a party in the said writ petition and the counsel for the appellant admits having appeared in the said writ proceedings on 12th December, 2011 though states that no notice of the said writ petition had been issued to the appellant. It is the case of the respondent that advance copy of the writ petition had been

served on the appellant and in pursuance whereof the appellant had appeared. Though the appellant, from the said writ petition also had knowledge of the order dated 14th July, 2010 of the Estate Officer but the appeal was not filed within the prescribed limitation period of 12 days from then also and is informed to have been filed only on 10th January, 2012. The same was dismissed as barred by time vide order dated 23rd January, 2012 supra of the District Judge. The challenge thereto by writ petition also failed as aforesaid before the learned Single Judge. The learned Single Judge however reduced the rate of interest from 18% per annum to 9% per annum from the date of the order of the Estate Officer, till realization.

4. We have enquired from the counsel for the appellant as to why the appellant had stopped participating in the proceedings before the Estate Officer. The counsel for the appellant has fairly stated that there is no explanation whatsoever therefor on record and admits the default of the appellant in this regard. We have next asked the counsel for the appellant as to whether the appellant had controverted the receipt of the copy of the order dated 14th July, 2010 of the Estate Officer as purported to be sent from the noting to the said effect on the order. Though the counsel denies receipt but is unable to show any plea to the said effect. We have then enquired from the counsel for the appellant as to what was the case set-up by the appellant in the application for condonation of delay in filing the appeal before the District Judge. The counsel states that no application for condonation of delay was filed along with the appeal. There is similarly no explanation for delay after 12th December, 2011 in preferring the appeal.

5. However notwithstanding the aforesaid , the counsel urges us to look into the merits of the defence of the appellant to the claim of the respondent allowed by the Estate Officer.

6. We, in exercise of our appellate powers, cannot overlook the gross neglect and defaults and delays of the appellant and for which no explanation also exists or is furnished and further, cannot convert our jurisdiction to that of the original fora and go into the merits of the defence of the appellant to the claim of the respondent. It cannot be lost sight of that the legislature has provided a short period of 12 days for preferring appeals against the order of the Estate Officer and no further appeals have been provided against the order of the Estate Officer. The writ petition was preferred invoking the powers of this Court of judicial review under Article 226 of the Constitution of India. However said powers are discretionary and cannot be permitted to be invoked by a person who is guilty of neglect, default, delays and latches. The Supreme Court as far back as in *State of Madhya Pradesh Vs. Nandlal Jaiswal* (1986) 4 SCC 566 held that discretion under Article 226 is not to assist the tardy and the indolent of the acquiescent and the lethargic.

7. Not only so, the appellant is a defaulter of public dues. The factum of the appellant having booked the rooms in the hotel of the respondent is not disputed. It is also not the case of the appellant that full and final payment on the said account was made. Admittedly a dispute was brewing and only some payment had been made by the appellant. It was for the appellant to contest the proceedings before the Estate Officer. Even if it was the case of

the appellant that the claim of the respondent before the Estate Officer was not within the purview of the PP Act and the Estate Officer had no jurisdiction, admittedly the said plea had been rejected by the Estate Officer vide order dated 12th May, 2008 and of which the appellant admits knowledge. The appellant did not take any remedies against the said order also and instead stopped participating in the proceedings. It is apparent that the appellant took a chance on, the respondent losing track of its claim against the appellant in bureaucratic red tape. However the respondent persisted with the claim. The appellant only when pressed to the wall started invoking the legal process and which cannot be permitted. A litigant who takes such a chance and benefits therefrom has to also suffer the consequences thereof.

8. We therefore do not find any merit in this appeal, which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 30, 2012

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