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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: May 01, 2012

Pronounced on: May 17, 2012

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W.P.(C) No. 312/2012
& C.M. No. 661/2012 (Stay)

HMT LTD.

..... Petitioner

Through: Mr. Joshua Samuel & Mr. Sudeep
Cecil, Advocates

versus

LIFE INSURANCE CORPORATION
OF INDIA AND ANR.

..... Respondents

Through: Mr. M.L. Mahajan & Mr. Gaurav
Mahajan, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
17.05.2012

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1. The proceedings under Sections 5 & 7 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, against the petitioner terminated by passing of the Eviction Order of 7th January, 2010 (Annexure P-16) in respect of premises admeasuring 4495 sq. feet and 198 sq. feet at the ground floor in Jeevan Tara Building situated at Parliament Street, New Delhi (*hereinafter referred to as the 'subject premises'*). Estate Officer's Order (Annexure P-16) evicting the petitioner from the subject premises while imposing damages @ `3,28,510/- per month w.e.f. 1st February, 2002 till the vacation of the subject premises was challenged by the petitioner by preferring a statutory appeal which was dismissed vide impugned order of 18th November, 2011

(Annexure P-2) as being barred by time.

2. There was delay of about fifty six days' in filing of the statutory appeal by the petitioner. The reason for the delay furnished by the petitioner before the Appellate Forum was that the petitioner was under the *bona fide* impression that the remedy against the Eviction order (Annexure P-16) was to seek a reference to Government's *Committee of Disputes*. Accordingly the petitioner had made a reference to the aforesaid Committee on 29th April, 2010 and hearing was afforded by the aforesaid Committee on 21st December, 2010 and the petitioner was called upon to furnish the requisite documents which were tendered to the said Committee in February, 2011. In July, 2011 the petitioner had learnt about the Instructions issued by the Ministry of Finance in June- July, 2011 of there-being no requirement of obtaining approval from Government's *Committee of Disputes* for pursuing litigation in view of the Apex Court decision in '*Electronics Corporation of India Ltd. vs. Union of India & Ors.* (2011) 3 SCC 404.

3. The delay is sought to be explained by urging that the petitioner's liaison office had promptly sent the papers of this case to its Corporate Office in July, 2011 itself and the requisite internal permission of the legal cell of the petitioner was obtained in August, 2011 and the statutory appeal was filed on 30th August, 2011.

4. Adopting a strict approach, the Appellate Forum vide impugned order has refused to condone the delay of fifty six days' in filing the statutory appeal by taking the period of delay to be substantial one and because the delay from January, 2010 till April, 2010 had remained unexplained.

5. At the hearing of this petition, it was urged by petitioner's

counsel that the delay occasioned in filing the statutory appeal was *bona fide* one and since the petitioner has a good case on merits, therefore, the delay ought to have been condoned, as the parties to this litigation are Government- Companies.

6. To refute petitioner's case, learned counsel for the respondent had relied upon decisions in '*Steel Authority of India Ltd. Vs. Life Insurance Corporation of India & ors.*' AIR 1997 SC 2590; '*Uttam Prakash Bansal Vs. L.I.C. of India*' 100 (2002) DLT 497 (DB) and '*New India Assurance Company ltd. Vs. Nusli Neville Wadia & Anr.*' I (2008) SLT 442 to urge that petitioner has no case on merits and since the delay remains unexplained, therefore, the impugned order cannot be faulted with.

7. Apex Court in '*State (NCT) of Delhi vs. Ahmed Jaan*', (2008) 14 SCC 582, has reiterated that while dealing with matters seeking condonation of delay, no special indulgence can be shown to the Government but a practical view of the working of the Government has to be taken into consideration and adoption of strict standard of proof in such like matters fails to protect the public cause and it could result in public mischief by skillful management of delay in the process of filing an appeal. It would be worthwhile to quote the pertinent observations made by the Apex Court in this decision, which are as under:-

"The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear

to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

8. In the instant matter, the impugned order unfortunately does not deal with the afore-noted explanation offered for the delay and merely records that the delay remains unexplained. It is true that no specific explanation was given by the petitioner before the Appellate Forum for the period of delay from January to April, 2010 but it has to be kept in mind that during the said period, obtaining of prior approval from Committee of Disputes for pursuing litigation was mandatory. This vital aspect has perhaps escaped the attention of the Appellate Forum, which renders the impugned order unsustainable, as the pedantic approach adopted by the Appellate Forum in refusing to condone the delay is indefensible.

9. While applying the ratio of decision in *Ahmad Jaan* (*Supra*), I set aside the impugned order (Annexure P-2) refusing to condone the delay in filing the statutory appeal, as the delay in filing the appeal stands sufficiently explained. Such a course is being adopted as the petitioner has arguable case on merits in appeal. Petitioner's application of 1st September, 2011 seeking condonation of delay (Annexure P-20 colly) filed before the Appellate Forum stands allowed in view of the reasons stated therein and the petitioner's appeal is restored to be heard on merits by the Appellate Forum. Parties through counsel to appear before the Appellate Forum on 25th May, 2012 for commencing hearing of the appeal with expedition.

10. With aforesaid directions, this petition and pending application are disposed of with no order as to costs.

(SUNIL GAUR)
JUDGE

MAY 17, 2012

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