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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 158/2013**

THE MUNICIPAL CORP. OF DELHI Appellant
Through : Mr. Parvinder Chauhan, Adv.

Versus

ADDITIONAL COMMISSIONER Respondent
Through : None

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

ORDER

% **15.03.2013**

CM 4443/2013 (condonation of delay of 163 days in filing)

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CM 4444/2013 (condonation of delay of 1020 days in re-filing)

LPA 158/2013 has been filed by the MCD challenging the order dated 9.11.2009 passed in W.P(C) No.6912/2007 alongwith CM 13102/2007. There is a delay of 163 days in filing and 1020 days' delay in re-filing the appeal. The following are the reasons given for the delay in filing the appeal:

“(a) That the judgment was pronounced on 9th November, 2009. Its certified copy was applied on 12.11.2009, but the same was delivered only on 25.11.09.

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(b) That, moreover, in this case Directions were issued for complying with the order dated 9th February, 2007 of the First Respondent. It was decided to challenge the order by filing the LPA.

(c) That a Legal Opinion was given by the Standing Counsel which was examined by the various functionaries of the MCD and ultimately by the Additional Commissioner, Slum & JJ Department, who instructed the Counsel to prepare the LPA.

(d) That the Grounds of LPA were again seen by the various authorities, including the Addl. Commissioner, who authorized the Deputy Director, Slum & JJ Department to sign the Affidavit in support of the LPA.”

(2) The following are the reasons given for the delay of 1020 days in re-filing the appeal:

“3. That the accompanying appeal, along with an application thereby seeking condonation of delay in filing the same, appears to have been filed on 4.6.2010.

5. That it appears that, the registry of this Hon’ble Court placed certain office objections and the same was obtained by the Ld. Counsel for removal of office objections. Apparently, same has not been re-filed.

6. That, in the meantime, the respondent no.2 to 4 did not take any steps for endorsement of their rights as accrued to them under the impugned order dated 28th February, 2007 passed by the Respondent No.1 which was being sought to be impugned by way of the W.P.(C) No.6912/2007.

7. That as a result of the aforesaid, the Appellant remained under the bonafide impression that inaction of the respondent nos.2 to 4 might have been on account of filing and pendency of the appeal.

8. That, however, the appellant received a notice dated 15.12.2012 issued by the Collector (South), Govt. Of NCT of Delhi requiring the appellant to appear on 24.12.2012. It is submitted that said notice was received in the office of appellant on 20.12.2012. A copy of the said notice is annexed herewith as Annexure-I.

9. That, in pursuance of the said notice dated 15.12.2012, official of the appellant went to the office of Collector (South) where, it was transpired that, there are some orders in favour of the respondent nos.2 to 4 which remained un-complied.”

(3) In **Balwant Singh v. Jagdish Singh** (2010) 8 SCC 685, Supreme Court, *inter alia*, held as under:-

“The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. (*sic a lis*). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

In **Maniben Devraj Shah vs. Municipal Corporation of Brihan**, 2012 5 SCC 157, considering the expression ‘sufficient cause’ used in Section 5 of Limitation Act in the context of Municipal Corporation of Brihan, Mumbai, Supreme Court, *inter alia*, observed as under:-

“24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may

condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.”

In **Office of the Chief Post Master General & Ors. v. Living Media**

India Limited and Anr. 2012(2) SCALE 782, after reviewing its earlier decisions on the subject, *inter alia*, held as under:-

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the

Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

Accordingly, the appeals are liable to be dismissed on the ground of delay.”

(4) Admittedly, certified copy of the impugned judgment was made available to the appellant on 25.11.2009 whereas the appeal for the first time came to be filed only on 4.6.2010. Thus, there is a time-lag of more than six months between the date on which certified copy of the impugned order was received by the appellant and the date on which the appeal was filed. No genuine attempt has been made by the appellant to explain this abnormal delay in filing the appeal even after receipt of the certified copy of the order. It is stated in para 2(b) of CM 4443/2013 that the decision was taken to challenge the order of the learned Single Judge by filing an LPA, but the application is conspicuously silent as to on which date such a decision was taken. It is stated in para 2(c) of CM 4443/2013 that a legal opinion was given by the Standing Counsel, which was examined by various functionaries but, again, the application does not disclose on which date the legal opinion was sought from the Standing Counsel and on which date such an opinion was given. The application is silent as to who took how much time to examine the file after receipt of legal opinion, and what was the time

taken at each level. The averments made in the application that the grounds for appeal were examined by various authorities are absolutely vague and incapable of being inquired into. In fact, we do not find even a sincere attempt to explain the delay in filing the appeal. The appellant ought to have given a chronological list of dates and events explaining, step-by-step, the delay from 25.11.2009 to 4.6.2010. That having not been done considering the view taken by the Apex Court, in the cases referred hereinabove, we find no good reason to condone such a delay in filing the appeal.

(5) As regards condonation of delay in re-filing, the Rules of Delhi High Court in the matter of filing and scrutiny of appeals are contained in Volume V of High Court Rules and Orders. Rule 5 Chapter “1”, Part A prescribes as under:-

“5. Amendment - The Deputy Registrar Assistant Registrar, Incharge of the Filing counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Asstt. Registrar, in charge of the filing Counter under sub-rule(1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar in charge of the Filing Counter, under sub-rule(1) it shall be considered as fresh institution.

Note – The provision contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether civil or criminal.]

It is quite clear from a bare perusal of the above Rule that the Deputy Registrar cannot grant time of more than 30 days in aggregate for re-filing of a Memorandum of Appeal, for the reasons specified in Order XLI Rule 3 of the Code of Civil Procedure. If the Memorandum of Appeal, after removing the defects notified by the registry, is filed after more than 30 days, it shall be considered as a fresh appeal, filed on the date on which it is presented after removal of the defects. As was held by the Hon^{ble} Supreme Court in Indian Statistical Institute v. M/s Associated Builders and Ors. AIR 1978 SC 335, the delay in re-filing is not subject to the rigours – which are usually

applied in excluding the delay in a petition filed u/s 5 of the Limitation Act. The court, however, has to be mindful that when there is delay in filing the appeal, a vested right accrues in favour of the respondent who, on account of non-filing of the appeal, becomes entitled to benefit of the judgment/decreed/order against which the appeal is preferred. Non registration and consequent non listing of an Appeal within the prescribed period leads the opposite party to believe that the judgement/order passed in his favour has been accepted by the opponent and that is the reason for not filing the Appeal. Therefore, even while adopting a liberal approach in such matters, the courts cannot mechanically condone even if no reasonable cause is shown at all. It cannot be said that even if the appellants were totally negligent and careless and have not come forward with any worthwhile explanation for the delay, the court ought to condone the delay in re-filing. The Rules framed by the High Court cannot be allowed to be taken so casually and there will be no sanctity behind the rules if every delay in re-filing, is to be condoned irrespective of howsoever unreasonably long and unexplained it be, condoning the delay in re-filing, even where there is no reasonable explanation to justify the delay, would only be travesty of justice

and will be as good as removing the relevant Rule in High Court Rules and Orders, from the Statute Book.

We find that there is no attempt to explain the abnormal delay of 1020 days except a bald submission that the appeal was not re-filed after it was obtained by the counsel for removal of the office objections. There is no explanation as to why the official of the appellant did not try to find out, from the counsel, as to what had happened to the appeal filed by them. Since the learned Single Judge had found the writ petition of the appellant assailing the order dated 28.02.2007 passed by Additional Commissioner(PWD Act, 1995)-cum-Deputy Commissioner District South Delhi directing MCD to allocate two units to the respondents within 30 days of the passing of the order, it would only be logical for the official of the appellant to remain in touch with the counsel and ascertain as to what was the order passed in their appeal since, in the absence of stay of the order by the learned Single Judge, the appellant would be duty bound to implement the order dated 28.2.2007 passed by the Additional Commissioner(PWD Act, 1995)-cum-Deputy Commissioner District South Delhi. No explanation at all has been given in this regard in CM 4444/2013. We, therefore, find no

ground to condone the abnormal delay of 1020 days in re-filing the appeal.

For the reasons stated hereinabove, both the applications are hereby dismissed.

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Since we have dismissed the applications for condonation of delay in filing as well as in re-filing the appeal, the appeal is liable to dismissed being barred by limitation. The appeal is also dismissed accordingly.

CHIEF JUSTICE

V.K. JAIN, J

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