

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

% Judgment reserved on : 06.05.2013
Judgment pronounced on : 14.05.2013

+ LA.APP. 29/2013 and CM No. 2277/2013 (condonation of delay of 2215 days in filing the appeal)

BALWANT

..... Appellant

Through: Mr. Deepak Khosla, Advocate

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Sanjeev Sahay, Adv. for L&B

And

+ LA.APP. 30/2013 & CM 2279/2013, 2281/2013, 2282/2013

RAM PHAL THR LRS & ANR

..... Appellant

Through: Mr. Deepak Khosla, Advocate

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Sanjeev Sahay, Adv. for L&B

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

CM Nos. 2277/2013 (condonation of delay of 2215 days in filing the appeal) in LA Appeal No. 29/2013 and 2280/2013 (condonation of delay of 1585 days in filing the appeal) in LA No. 30/2013

CM No. 2277/2013 has been filed in LA Appeal No. 29/2013 for condonation of delay of 221 days, whereas CM No. 2280/2013 has been filed in LA Appeal No. 30/2013 for condonation of delay of 2280/2013 in filing the said appeals. The reasons given in CM No. 2277/2013 for condonation of delay read as under:

“3. That earlier counsel for the appellant did not inform the appellant regarding passing of impugned judgment/award dated 29.04.2006 to the appellant. However the earlier counsel assured the appellant that he would inform the appellant as and when the reference court decide the reference.

4. That on 18.03.2012 Shri Rajbir Singh S/o Shri Deep Chand met the appellant and disclosed that the reference petition of all the villagers have been decided by reference Court of Ms. Poonam A. Bamba, ADJ, Delhi long back. The appellant immediately contracted his earlier counsel to know the status of his reference petition. The earlier counsel did not give any satisfactory reply to the appellant. The appellant took the brief from his earlier counsel and contract Ms. Sunita Jain Advocate, Chamber No. 329-30, Civil Wing Tis Hazari Delhi on 20.03.2012.

The present counsel made enquiries and came to know that the reference court decided the reference of appellant vide impugned judgment dated 29.04.2006.

5. That on the instructions of the appellant the present counsel applied for certified copy of the impugned judgment on 21.03.2012 which was prepared and made available to the counsel on 28.03.2012. Thereafter the counsel told the appellant to arrange fund for purchasing the court fee, professional charges and misc. expenses.

6. That the appellant could arrange the funds and made payment to the counsel on 16.04.2012 for purchasing the Court fee and instructed her for drafting the appeal. The counsel for the appellant drafted the appeal and the same is being filed before this Hon'ble Court along with present application for condonation of delay of 2215 days.

7. That the appellant came to know about passing of the impugned judgment by the reference Court only on 20.03.2012 and before 20.03.2012 the appellant was not having any knowledge about passing of impugned judgment.

8. That non filing of the appeal within the prescribed period of limitation by the appellant was due to reason stated above which was beyond the control of the appellant. The appellant had all the intentions to file an appeal seeking enhancement in the compensation.”

The reasons given in CM No. 2280/2013 for condonation of delay read as under:-

3. That the reference petition was being conducted by Smt. Sunita Jain Advocate who had been conducting the case for and on behalf of the appellants.

4. That it was suggested by the counsel that the presence of the appellants is not required on each and every date and it was undertaken by the counsel that as and when the presence of the appellants will be required, she shall inform accordingly.

5. That the matters relating to Village Kakrola were decided long back by the learned Reference Court.

6. That the decision in this case was announced on 22.1.2007 but the appellants herein had no knowledge regarding the passing of the impugned award. The learned counsel who was conducting the case also do not intimate to the appellants regarding decision of the case.

7. That till second week of August, 2011 the appellants had no knowledge regarding the passing of the impugned Award.

8. That the appellants met Shri Amrit Son of late Ram Mehar whose case was also decided by the reference court presided over by Dr. T.R. Naval, ADJ, Delhi and who had preferred an appeal against the said judgment, told the appellants that the reference court had decided the references of village Kakrola long back against which land owners had preferred appeals before the Hon'ble High Court. On coming to know regarding the decision of other references pertaining to the same awards, the appellants rushed to the Court and met their counsel to know the fate of his case and it was then disclosed by the Ld. Counsel that the

reference has been decided on 22.01.2007 by Ld. Court of Dr. T.R. Naval, ADJ Delhi, and the earlier counsel further stated she had sent information to appellants through Shri Amrit, son of late Ram Mehar who may forget to inform the appellants regarding decision of reference petition of the appellants.

9. That thereafter the appellants contacted the present counsel Shri Deepak Khosla Advocate and the appellants got applied for certified copy of the impugned award and instructed the counsel for drafting of Land Acquisition Appeal. Thus, the appeal is now being filed without any further delay.

9. That there is delay of 1585 days which was due to reasons submitted hereinabove. The delay was bonafide and unintentional and was caused due to reason submitted above.”

2. In Land Acquisition Appeal No.92/2013, delay of 736 days in filing the appeal on the ground that the appellant was not aware of his legal right to file an appeal was condoned subject to the condition that the appellant shall not be entitled to interest for the aforesaid period. In Land Acquisition Appeal No. 19/2013, the delay of 2203 days in filing the appeal was condoned on the similar ground and subject to similar condition. On the other hand in Land Acquisition Appeals No. 25/2012 to 27/2012, the application of the appellant for condonation of delay on

the ground that they were not aware of their right to file the appeal against the impugned order, they being illiterate persons, was rejected by this Court noticing that they were duly represented by their counsel before the Reference Court. This Court rejected the contention of the appellant in that case that they had come to know from the other villagers about their filing of appeals against the impugned order and only then they contacted their counsel who drafted the appeal filed on their behalf. In Land Acquisition Appeal No. 617/2011, this Court rejected the application seeking condonation of delay of more than five years on the ground that the appellant being a poor person residing in village could not contact his counsel.

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.

4. Section 5 of the Limitation Act requires sufficient cause to be shown before the delay in filing of an appeal can be condoned. If the delay is to be condoned without such a cause being shown and merely by imposing a condition that the appellants would not be entitled to interest for the period of delay that would defeat the very purpose behind the

requirement of sufficient cause being shown by the person seeking condonation of delay in filing an appeal. The question of imposing condition would arise only if sufficient cause is shown for not preferring an appeal within the prescribed period of limitation.

5. It is not in dispute that the appellant/applicant was duly represented by a counsel before the Reference Court. The plea taken by him that since the counsel did not inform him of the order passed by the Reference Court, he had no knowledge of the said order. Admittedly, no action has been taken by the appellant against the counsel, who is alleged to have failed to inform him of the said decision. No complaint to the Bar Council has been made by the appellant against the counsel who was representing him before the Reference Court. Even otherwise, it would be difficult to accept that the appellant would not bother to contact his counsel for as many as 5-6 years at a stretch. Normally, the litigants in District Court remain in regular contact with their counsel. Unlike High Court, the date on which order is to be pronounced is notified by the Court at the time of conclusion of arguments. Therefore, in all probability, when the arguments are concluded and a date is given for pronouncement of judgment, the Advocate would intimate the date fixed by the Court for

pronouncement of judgment to his client. In any case, on the date fixed for pronouncement of judgment, the Advocate appears and the order is pronounced in his presence. Even if he is not present at the time of pronouncement of order, he would make inquiry in this regard from the Reader of the Court and intimate the decision to his client. In case, the counsel is so negligent as not to intimate the decision of the Court to his client for years together, the client is not likely to remain silent and would certainly blame his counsel for not intimating the order of the Court to him. More importantly, no affidavit of the counsel who represented the appellant before the Reference Court has been filed in support of the contention that he had not intimated the order of Reference Court to the appellant/applicant. According to the appellant in LA No. 30/2013, one Amrit Singh son of late Ram Mehar told him that the Reference Court had decided the reference of village Kakrola long back against which the land owners had preferred appeal and it was at that stage that the appellant rushed to the Court and met the counsel, who disclosed the order of the Reference Court to him. However, the affidavit of Mr Amrit has not been filed by the appellant.

It is stated in the application that the market value in respect of the land situated in village Kakrola has already been determined by a Division Bench of this Court and these appellants are entitled to get the same market value. It is thus quite obvious that the appellants were full aware of the order passed by the Reference Court, they had decided not to challenge the said order and now on coming to know of the order passed by a Division Bench of this Court in certain other appeals, they want to take advantage of the same order by filing this appeal at a higher belated stage. In **Mewa Ram (deceased) by his Lrs and Ors. Vs. State of Haryana through The Land Acquisition Collector, Gurgaon** [(1986) 4 SCC 151], the delay in filing the Special Leave Petition was sought on the ground that the Court, in another case, had enhanced the rate of compensation for the adjacent land. The Special Leave Petitions were barred by more than 1000 days delay. The Court was of the view that the ground given in the petition did not justify condonation of such an inordinate delay.

6. In CM No. 2280/2013, it is stated in the application that on 18.03.2012 one Rajbir Singh disclosed that the Reference Petition of all the villagers had been decided long back by the Additional District Judge

and it was at that stage that the appellant contacted his counsel, who did not give any satisfactory reply and thereupon he engaged another counsel who made enquiry in this regard and informed the appellant that the Reference Court had decided the matter on 29.04.2006. However, no affidavit of Mr Rajbir Singh has been filed with the application.

7. For the reasons stated hereinabove, I find no ground to condone the inordinate delay in filing these appeals.

The applications are accordingly dismissed.

LA Appeal No. 29/2013 and LA Appeal No. 30/2013

In view of the dismissal of the applications seeking condonation of delay, the appeals are dismissed as barred by limitation.

MAY 14, 2013
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V.K.JAIN, J