

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

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Date of Decision: 26.04.2013

+ LA.APP. 92/2013

KARAN SINGH & ANR

..... Appellant

Through: Mr L.B. Rai and Mr D.S. Lakra, Adv.

versus

UNION OF INDIA & ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

CM 6572/2013 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM 6573/2013 (condonary of delay of 130 days in re-filing the appeal)

This is an application for condonation of delay of 130 days in re-filing the appeal.

In view of the submissions made therein, the application is allowed and the delay in re-filing the appeal is condoned.

The application stands disposed of.

CM 6571/2013 (condonary of delay of 2542 days in filing the appeal)

Vide this application, the appellant is seeking condonation of delay of 2542 days in filing the accompanying appeal, preferred against the order dated 20.8.2005 passed by the learned Additional District Judge, Delhi in LAC No.24/2004. The only ground given in the application for condonation of delay is as follows:

“3. That there is 2542 days delay for filing the present appeal due to this reason that the appellant has been living in village Mundka and could not contacted to his counsel as the appellants were not aware about the right to file the appeal. But when other villagers informed them about the filing of appeal against the impugned order only then appellant contacted to his counsel then the present appeal has been drafted and filed in the hon’ble court but in the meantime limitation period has already been passed. The applicant could not file the present appeal in time due to the above said reason which is not intentional.”

2. The application has been strongly opposed by the learned counsel for the respondent who submits that no sufficient has been shown by the appellants for condonation of the abnormal delay of more than 7 years in filing the appeal.

3. In support of his contention, the learned counsel for the appellants places reliance upon the decision of this Court in LPA 92/2013 where the 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, the order dated 4.3.2013 passed in LA Appeal No.19/2013 where the delay of 2203 days in filing the appeal was condoned on the similar ground and subject to similar condition. He also relied upon the orders dated 30.11.2011 of this Court in LA Appeal No.617/2011 and order dated 30.01.2012 in LA Appeal 25/2012 and connected appeals. The learned

counsel for the respondents on the other hand relies upon the order passed by this Court on 30.11.2012 passed in LA Appeal 25/2012 to 27/2012 where 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. The learned counsel for the respondent also relied upon the order passed by this Court on 30.11.2011 passed in LA Appeal No.617/2011, rejecting the application for 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.

4. 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.

5. 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.

6. A perusal of the order impugned in the appeal would show that the appellants before this Court were duly represented by a counsel before the learned Additional District Judge and the matter was extensively argued on their behalf. This exactly is not the case of the appellants/ applicants that they were not aware of the order passed by the Reference Court on 20.8.2005. The appellants being advised and represented by their counsel and having already preferred Reference under Section 18 of the Land Acquisition Act, it would be difficult to accept that they were not aware of their legal right. It is not the specific case of the appellants/ applicants that their counsel did not inform them about the order passed by the learned District Judge, the averments made in this regard being very vague.

7. The application under consideration does not disclose the name of the counsel who represented the appellants before the Reference Court. The application is not supported by the affidavit of the counsel who appeared in the Reference Court on their behalf. No negligence or misconduct to the counsel has been imputed.

Even otherwise, it is highly unlikely that a person would not bother to contact his counsel for as many as 7 years at a stretch. For the reasons stated hereinabove, I am of the view that the appellants/ applicants has failed to show sufficient cause for not preferring an appeal within the prescribed period of limitation.

The application is devoid of any merit and is hereby dismissed.

LA.APP. 92/2013

In view of the dismissal of CM No.6571/2013, the appeal is dismissed as barred by limitation.

V.K. JAIN, J

APRIL 26, 2013/rd