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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 231/2012**

Decided on 16th October, 2014

DDA

..... Appellant

Through: Mr. Pawan Mathur, Adv.

versus

JANAK MB SINGH & ORS

..... Respondents

Through: Mr. Rajat Aneja and Ms. Aaroahi,
Advs. for R-1 to R-3.

Mr. Rajeshwer Kr. Gupta and Ms.
Sumati Sharma, Advs. for R-6.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(ORAL)

CM No. 9558/2012 (Delay)

1. Appellant filed a suit before the trial court praying therein that order dated 25th February/7th March, 1981, cancelling the perpetual sub-lease and ordering resumption of plot, be declared legal, valid and binding; decree dated 8th November, 1979 passed in Suit No. 518/79 titled Shri Tejpal Singh vs. Mahabir Singh be declared as fraudulent, collusive, illegal having no legal consequences; decree of declaration that judgment dated 23rd April, 1998 passed in RCA 116/90 was contrary to law and facts on record and was not binding and that respondent nos. 1 to 3 be restrained from transferring,

alienating or parting with possession of suit property in any manner. After the trial, suit of appellant has been dismissed vide judgment and decree dated 14th December, 2009 passed by the trial court.

2. Aggrieved by the aforesaid judgment and decree appellant has preferred this appeal on 17th May, 2012. There is delay of 788 days in filing the present appeal, which has been sought to be condoned on the grounds as mentioned in the application for condonation of delay, which will be discussed later, after giving brief background of the case which has a checkered history.

3. Predecessor-in-interest of respondent nos. 1 to 3, namely, Shri Mahabir Singh was allotted a plot no. 63 admeasuring 300 square yards by Serai Julliana Cooperative House Building Society Limited (presently known as Sukhdev Vihar, New Delhi) since he was member of the said society. The society was allotted land by the Land and Building Department, Delhi Administration. Shri Mahabir Singh became member of the said society in the year 1961. Allotment was made sometime in the year 1975. Land and Building Department of Delhi Administration executed a perpetual lease deed dated 31st March, 1975 in favour of Shri Mahabir Singh. Later on, Lt. Governor of Delhi cancelled the allotment on the ground that

Mahabir Singh submitted wrong affidavit that he was not having a property; whereas he owned property at Lajpat Nagar.

4. One Shri Tejpal Singh filed a suit against Shri Mahabir Singh for declaration and permanent injunction. In fact, plot nos. 19/120 and 19/120-A, New Double Storey, Lajpat Nagar –IV, New Delhi were in the name of Shri Mahabir Singh. Shri Tejpal Singh alleged in the suit that said plots were purchased by him in the name of Shri Mahabir Singh and, in fact, he was owner of the said plots and he declared owner thereof. The transaction was a benami transaction. Shri Tejpal Singh claimed that he was true and legal owner of the said plots. The said suit was decreed by the Sub Judge, 1st Class vide judgment and decree dated 8th November, 1979.

5. Shri Mahabir Singh filed a suit for declaration that cancellation letter dated 17th March, 1981 of Lieutenant Governor be declared as illegal. The said suit was dismissed by the Sub Judge, 1st Class vide judgment dated 12th December, 1984. In the said suit Delhi Administration, predecessor-in-interest of appellant, was defendant along with Lieutenant Governor and contested the suit. Shri Mahabir Singh filed first appeal being RCA 116/1990 before the Additional District Judge, Delhi which was allowed and an appellate decree was passed on 23rd April, 1998 and the cancellation

letter was declared invalid. Serai Julliana Cooperative House Building Society Limited filed Regular Second Appeal no. 56/1998 in this Court wherein Lieutenant Governor and Delhi Administration were impleaded as respondent nos. 5 and 6. Subsequently, said society withdrew this appeal on 19th April, 1999. In the meanwhile, since mutation was not effected in the name of legal heirs of Shri Mahabir Singh, who unfortunately expired during the pendency of appeal, they filed a WP(C) No. 1993/2012 against the appellant for carrying out mutation in their names. This writ petition was disposed of vide order dated 10th April, 2012 by a Single Judge of this Court. Appellant was directed to mutate the plot in question in favour of respondent no.1. Appellant was directed to do the needful within four weeks. However, this order was not complied with, therefore, respondent no.1 filed a contempt petition being CCP no. 304/2012 against the Vice Chairman of appellant, wherein he was directed to comply the order passed in the writ petition if not already done, within four weeks subject to filing reply furnishing explanation and also to remain present in Court on 24th August, 2012. After passing of the said order present appeal has been filed on 17th May, 2012. In view of the filing of present appeal contempt petition was disposed of.

6. Now coming back to the application for condonation of delay. A perusal of application shows that appellant seeks to explain the delay of 788 days on the ground that appeal was marked to the counsel on 25th March, 2010, who contacted the department and intimated that entire record was necessary and be sent for filing the appeal and sent back the file to department on 24th April, 2010 with the instruction to send complete records. Files were received back by the counsel and the matter was discussed with the officials of appellant who were intimated that without the entire records of the cases, preparation of appeal was difficult. In spite of their best efforts, department was not able to provide necessary records of various rounds of litigation and the relevant information qua the cases in which Delhi Administration was a party. As such counsel decided to send back the files to the department vide its notice dated 1st July, 2010 for further action. Clerk of the counsel had inadvertently kept the files with the decided cases, thus, files of the present case could not be sent back to the department in time. It also escaped attention of the officers of the department that appeal had to be filed in the present case, accordingly, no follow up action was taken. Due to pre-occupation of the counsel it escaped his notice that appeal had to be filed. Department called for the files of the

present case in the third week of April, 2010 when it transpired that files were not traceable in the office of counsel and on extensive search it could be found that files of the present case were kept along with decided files. Eventually files were traced and sent back to the department on 24th May, 2012 (during the course of hearing learned counsel has contended that date of 24th May, 2012 has been inadvertently typed out instead of 24th February, 2012). Department again sent back the files to counsel in the third week of April, 2012. Thereafter, counsel remained in touch with the officials of appellant calling upon them to provide entire record relating to Suit No. 518/1979, Suit No. 247/1981, RCA No. 16/1990 as well as CWP No. 478/1981 filed by Shri Mahabir Singh. In spite of best efforts, officials of appellant could not trace out the records and provide relevant information to the counsel. Thereafter, matter was taken up with senior officers in law department of appellant and it was decided that appeal be prepared and filed on whatever records were available including the records of WP(C) 1993/12 and contempt petition. In the month of May, 2012 officials of appellant made endeavour to get the records from the Record Room of Tis Hazari but the same was not available on account of fire in the Record Room. In these facts, it is contended that delay was not willful and intentional and was for

the bona fide reasons as stated above.

7. First of all, I am of the view that reasons given by the appellant in the application are as vague as they could be. The reasons are bereft of any details. Perusal of application only indicates that appeal could not be filed on account of non availability of records. It has not been detailed as to what records were not available and when the same were traced out and by whom. As per the application, file appears to have remained untraceable in the office of the counsel for above two years. It has also not been mentioned as to when clerk of the counsel kept the files of the present case with the disposed of records and when this fact came to the notice of the appellant's counsel. Even name of the clerk has not been disclosed, inasmuch as, the details of disposed of files with which present file was mixed up has not been disclosed. A stereotype plea, which is normally taken in the matter pertaining to government departments to explain the delay, is taken in the present case as well. No reason has been offered as to why no follow up action was taken by the officials of appellant. It appears that counsel has taken up majority of the blame upon himself. There is no explanation as to what steps officials of appellant had taken almost for two years for filing the appeal and for procuring the alleged records. Why appellant's officials did

not contact the lawyer for filing the appeal has also not been explained. It has also not been disclosed as to how and from where appellant was able to retrieve the records. Even otherwise, plea of appellant that records were not traceable appears to be not a correct statement. PW1, in his cross examination, has admitted that file in question was received by the plaintiff from Delhi Administration after the year 1999. He admitted that control of all the societies and all the records which were received in the office of Delhi Development Authority (DDA) were with the DDA. It has also been admitted by PW1 that appellant had the prior information about the litigations which were filed against the Delhi Administration. In fact, earlier the property was within the control of Land & Building Department of Delhi Administration but was subsequently transferred to the appellant. Till the time property was with the Delhi Administration it was contesting the litigation filed by the predecessor-in-interest of respondent nos. 1 to 3. It is, thus, clear that Delhi Administration had handed over the records in respect of the lands which were transferred to the appellant and this fact has been admitted by PW1 in his cross-examination. In view of this admission of PW1, the plea of appellant that records were not available with the appellant cannot be believed. In any case, appellant cannot get away from its

negligence by putting entire blame on the lawyer. I am of the view that appellant has miserably failed to disclose sufficient reasons to explain the delay of more than two years. Reasons are vague and stereotype and cannot be accepted as ‘sufficient reasons’.

8. By placing reliance on *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors.* 2013 (11) SCALE 418, *State (NCT of Delhi) vs. Ahmed Jaan* (2008) 14 SCC 582 and *S. Ganesharaju (D) through LRs & Anr. Vs. Narasaa (D) through LRs & Ors.* 2012(4) SCALE 152, it has been contended that courts have to adopt liberal approach while considering the application for condonation of delay and has not to seek explanation of each day delay. A liberal, pragmatic, justice oriented, non-pedantic approach has to be adopted while dealing with an application for condonation of delay. The term “sufficient cause” has to be understood in its proper spirit, philosophy and purpose regard being had to the fact that the term is basically elastic and is to be applied in proper perspective to the obtaining fact-situation. Efforts have to be made to do substantial justice instead of throwing away the litigation on technical grounds. Only in case there is a gross negligence on the part of the department or a counsel and lacks bona fide on their part, the delay may not be condoned, however, in

case delay has occurred on account of bona fide reasons the delay is necessarily requires to be condoned. As against this learned counsel for the respondents has contended that delay can be condoned only if sufficient reasons are offered. Delay cannot be condoned in each and every case even when no sufficient cause is disclosed. Delay cannot be condoned on the vague, frivolous and flimsy reasons. No distinction can be made between a private litigant and a government department while scrutinizing the reasons for condoning the delay. A litigant has to be vigilant and pursue the matter diligently. If there is gross negligence on the part of the litigant delay cannot be condoned. It is further contended that court has also to keep in mind that what has been settled is not unsettled by entertaining a litigation after inordinate delay. He has placed reliance on Mahanagar Telephone Nigam Limited vs. State of Maharashtra & Ors. (2013) 9 SCC 92, Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629 and Postmaster General & Ors. Vs. Living Media India Limited & Anr. (2012) 3 SCC 563.

9. Indubitably, a liberal, pragmatic, justice oriented and non-pedantic approach has to be adopted while considering the reasons offered to explain the delay by a litigant, however, that would not mean that in each and every

case delay has to be condoned even where no convincing reasons are offered . If such an approach is adopted it will make Section 5 of the Limitation Act, 1963, negatory. A litigant cannot be permitted to walk in court at his personal convenience and seek to unsettle the litigation which stands settled by judicial pronouncement made long ago. If a litigant is grossly negligent and the reasons offered are stereotype, vague and lack bona fides delay cannot be condoned. Length of delay is immaterial and it is the sufficiency of reasons which matters. In *Postmaster General* (supra), Apex Court held thus :-

“28. 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 bona fides, 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.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities and unless they have reasonable and acceptable explanation for the delay and there was bona fide efforts, 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

10. In *Maniben Devraj* (supra), Supreme Court has held thus :-

“18. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. 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. 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.”

11. In *Basawaraj vs. Special Land Acquisition Officer* 2014 AIR (SC) 746, Supreme Court has held as under :-

“15. The law on the issue can be summaries to the effect that

where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

12. In *Brijesh Kumar vs. State of Haryana* AIR 2014 SC 1612, Supreme Court has held as under :-

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

13. In *P.K. Ramachandran vs. State of Kerala* (1997) 7 SCC 556, Supreme Court has held thus “Law of limitation may harshly affect a

particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds”.

14. In the facts of the present case, I am of the view that appellant has failed to disclose sufficient reasons to explain the delay of more than two years in filing the present appeal. Accordingly, application is dismissed, consequently, appeal also goes being time barred.

A.K. PATHAK, J.

OCTOBER 16, 2014

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