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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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Date of decision: 27.08.2018

CM(M) 982/2018 & CM APPL. 34458-34460/2018

M/S. TOP SHOP

..... Petitioner

Through Mr. Anurag Dubey, Mr. Suman
Kumar Divakar, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through Mr. Vipul Ganda, Ms. Shreya
Jain, Ms. Chandreyee Maitra,
Mr. Mayank Garg, Advs.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER (ORAL)

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27.08.2018

ANU MALHOTRA, J.

C.M. APPL. 34460/2018

1. This C.M. APPL. 34460/2018 has been filed on behalf of the petitioner seeking condonation of 56 days delay in re-filing the present petition after removal of the objections.
2. For the reasons explained in the application, the condonation of 56 days delay in re-filing the petition is condoned.
3. The application is disposed of.

CM APPL. 34459/2018 (exemption)

4. Exemption allowed subject to all just exceptions.
5. Application is disposed of.

CM(M) 982/2018 & CM APPL. 34458/2018

6. Submissions have been made on behalf of either side and in view of the submissions made in view of the specific Court query, it has been submitted on behalf of either side that the said submissions relate to the entire merits or demerits of the present petition and, hence, the petition CM(M) 982/2018 & CM APPL. 34458/2018 are taken for final disposal.

7. Vide the present petition, the petitioner assails the impugned order dated 18.04.2018 of the learned ADJ-03, PHC, New Delhi in RCA No. 5267/18 vide which the application filed on behalf of the NDMC i.e. the respondent herein seeking the condonation of 670 days delay in filing the appeal against the impugned order dated 24.09.2013 of the CCJ, PHC, New Delhi, was allowed and the delay in filing the said appeal was condoned subject to the payment of costs as imposed therein. It has been submitted on behalf of the respondent in reply to the specific Court query that the matter is now listed for 10.12.2018 and the costs imposed on 18.04.2018 would be paid on the said date and the same could not be paid as the matter could not be taken up as the petitioner herein i.e. the respondent to RCA No. 5267/18 had sought an adjournment.

8. It has been submitted on behalf of the petitioner herein that the delay of 670 days of delay in the institution of RCA No. 5267/18 by the respondent has been erroneously allowed by the learned Trial

Court and it has been submitted that merely because the respondent is a Government Authority, there can be leniency shown and reliance in relation thereto has been placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Postmaster General & Ors. Vs. Living Media India Limited & Anr. (2012) 3 SCC 563* with observations in paras 28, 29 & 30 to the effect : -

“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 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.

29. 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.

30. 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.”

therein to contend that the delay therein was not condoned and thus *inter alia* through the present petition, reliance is also placed on behalf of the petitioner on the verdict of Hon’ble Supreme Court in ***State of UP Vs. Amar Nath Yadav 2014 (2) SCC 422*** to submit that there was no condonation of 481 days delay granted in the facts and circumstances of the said case.

9. On behalf of the respondent, reliance is placed on the verdict of the Hon’ble Supreme Court in ***State of Haryana Vs. Chandra Mani and Ors. AIR 1996 SC 1623***, to contend that the expression sufficient cause should be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for explaining each day’s delay. Reliance has been placed specifically on the observations in para-11 of the said verdict, which is also referred to in the impugned order. The said observations in para-11 are to the effect : -

“It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the

State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level

should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay.”

10. Reliance is also placed on behalf of the respondent on the verdict of Hon'ble Supreme Court in *State of Nagaland Vs. Lipok AO and Ors. reported in AIR 2005 SSC 2191* reference with specific in paras 16 & 17 of the said verdict which are to the effect : -

“16. In G. Ramegowda, Major v. Spl. Land Acquisition Officer (1988 (2) SCC 142), it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which,

perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of [Section 5](#), it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

17. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and

encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice- oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

which is also adverted to in the impugned judgment.

11. Reliance is also placed on behalf of the respondent on the verdict of this Hon'ble Supreme Court in *Perumon Bhagvathy Devaswom Vs. Bhargavi Amma (Dead) by LRs. and Ors. in 2008(6) ALD 63 (SC)* with specific reference to para 8(iii) of the said verdict which read to the effect : -

“8. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows :

(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in [section 5](#) of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

12. Reliance is also placed on behalf of the respondent on the verdict of this Court in *Delhi Development Authority Vs. Khem Chand and Ors.* 2016 IV AD (Delhi) 6 wherein paras 14 & 18 in *State of Nagaland Vs. Lipok AO and Ors.* reported in AIR 2005 SSC 2191 has been relied upon to the effect:-

"14. In State of Nagaland v. Lipok AO, (AIR 2005 SC 2191: 2005 AIR SCW 1748) (supra), the Supreme Court referred to several precedents on the subject and observed that the proof of sufficient cause is a condition

precedent for exercise of discretion vested in the Court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Court also took cognizance of the usual bureaucratic delays which takes place in the functioning of the State and its agencies/instrumentalities and observed:

"Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal."

18. Learned counsel for the appellant, on the other hand, relies upon the same set of judgments and some others, especially the judgment referred in State of Nagaland vs. Lipok Ao And Ors., (supra) wherein the Supreme Court has observed at paras 15 and 16 as hereunder:

"15. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and

encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice- oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally

responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

16. The above position was highlighted in State of Haryana v. Chandra Mani and Ors. (1996 (3) SCC 132); and Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma(1996 (10) SCC 634). It was noted that adoption of strict standard of proof sometimes fail to protract public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.”

with specific reference to the observations in paras 19, 20 & 21 of the said verdict : -

“19. In the background of the legal principles and the facts stated in the petition, there does not appear to be any uncondonable negligence.

20. It is true that whenever there is a delay, there is some sort of negligence.

21. In the present case, good faith and bonafides do not appear to be wanting. Thus, the delay of 100 days in filing the second appeal is condoned and the application is allowed and disposed of accordingly. RSA 387/2015 Relist on 08.07.2016.”

to contend that in the instant case the bonafides of the respondent are not wanting and that thus the delay in filing the appeal was rightly condoned qua submission of the appeal against the judgment dated 24.09.2013 of the CCJ, PHC, New Delhi in Suit No. 8/8/87.

13. It has further been submitted on behalf of the respondent that in the instant case there is a fundamental issue involved which would affect public interest in relation to about 3600 shops situated in Palika Bazar, Connaught Place, New Delhi and that vide the impugned judgment dated 24.09.2013 in Suit No. 8/8/87 of the CCJ, PHC, New Delhi, the petitioner herein has been held to be a lessee of the shop No. 87, Palika Bazar, Connaught Place, New Delhi and if the said order is not allowed to be challenged, it would set a precedent in relation to 3600 shops situated at Palika Bazar, Connaught Place, New Delhi in as much as the respondent seeks to contend that the petitioner herein and all other persons likewise situated in such premises in such shops situated at Palika Bazar, Connaught Place, New Delhi are licensees and that there would be a grave loss to the public exchequer and public interest would be affected.

14. On a consideration of the rival submissions in the facts and circumstances of the instant case, taking into account the reasons that have been explained through the application seeking condonation of delay in RCA No. 5267/18 coupled with the factum that qua the time from 10.10.2013 when the respondent received the certified copy of the order dated 24.09.2013, the reasons for delay, thereafter for institution of the appeal are submitted in a supplementary affidavit

submitted before the Trial Court to the effect that there were variations in the legal opinion that had been given in relation to the institution of an appeal or otherwise and that the bonafides of the respondent in the instant case were not wanting, in the facts of the instant case, it is held that the delay in filing the appeal was not uncondonable in the facts and circumstances of the instant case where public interest is clearly involved.

15. Taking the same into account, the petition bearing no. CM(M) 982/2018 is declined.

16. Copy of the supplementary affidavit produced by the respondent during the course of the present proceedings be placed on the record.

ANU MALHOTRA, J

AUGUST 27, 2018/MK

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