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

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Date of Judgment: 10th August, 2018

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LPA 410/2017, CM APPLN. No. 21094/2017 (Delay of 255 days)

DELHI ENERGY DEVELOPMENT AGENCY Appellant

Through: M Kush Sharma, Adv

versus

HARI CHAND & ORS.

..... Respondents

Through: Ms Pratishtha Vij, Adv for R-1

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Aggrieved by the order dated 08.08.2016 passed by a learned Single Judge by which the application seeking restoration of the writ petition was dismissed on the ground of delay of almost 26 months has led to the filing of the present appeal. Along with the appeal an application has been filed seeking condonation of 255 days delay in filing the appeal.

2. Learned counsel for the appellant submits that after the impugned order dated 08.08.2016 was passed, the counsel for the appellant had informed the department/Delhi Energy Development Agency. Thereafter on 20.08.2016, he had received instructions to prepare the appeal. The appeal was prepared on 30.08.2016 and sent to the department for finalization. However, the appeal was returned on 05.09.2016 and given to the clerk on

07.09.2016 for filing the same in the Registry. Regular inquiries were made from the clerk as to the status of the appeal, however, the clerk assured that the same had been filed. It is further stated that on 22.10.2016, the clerk left the office and another clerk was appointed on 01.11.2016, who on 03.11.2016, informed the counsel that no such LPA has been filed in the Registry. Thereafter another copy of the appeal was printed from the office and sent to the department for signatures on 22.11.2016. The signed copy of the appeal was received on 24.11.2016. By the time the signed copy of the appeal was received, the office was flooded with heavy seepage due to which various files including the file of the present LPA was destroyed. The counsel shifted to a new address in April, 2017. Again another print out of the appeal was obtained on 22.04.2017 and sent to the department for signatures, which was then received on 05.05.2017 and the appeal was filed on 20.05.2017.

3. This application has been vehemently opposed by learned counsel for the respondent No.1, who submits that respondent No.1 is a poor worker and has been deprived of his salary for the past 20 years, although, some payment was received for a short period under Section 17B of the Industrial Disputes Act, 1947.

4. We have learned counsel for the parties and considered their rival submissions.

5. In the case of *Office of the Chief Postmaster General & Ors. Vs. Living Media India Limited and Anr.*, reported in *AIR 2012 SC 1506*, the Supreme Court of India has analysed the entire law on the subject. It would be relevant to reproduce paras 11 to 13, which is reproduced below:

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"11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in

prosecuting the matter to this Court by taking appropriate steps.

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

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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."

6. In the case of *Office of the Chief Postmaster General & Ors. (Supra)*, the Supreme Court was considering an application seeking condonation of delay filed by a Government Department. The present case also pertains to a Government Department which admittedly has a legal department. The first question which arises for our consideration is whether the application discloses sufficient grounds for condonation of delay.

7. While considering the application seeking condonation of delay, the period of delay is not the criteria. A short delay may not be condoned in the absence of an acceptable explanation while a large delay may be condoned if the explanation is satisfactory. Courts cannot lose track of the fact that normally after the expiry of the period, the right to sue extinguishes and the

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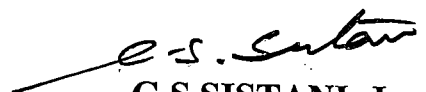
other side acquires a right which should not be usually disturbed as it would cause injustice to the opposite party.

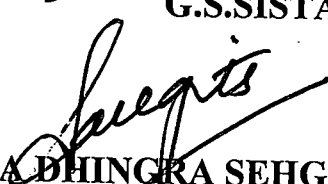
8. The facts of this case disclose a very sorry state of affairs. A writ petition filed by the appellant was dismissed in default. An application for restoration was filed after 26 months, which was dismissed by the Single Judge. The appellant still did not learn a lesson and has filed the present appeal seeking condonation of delay of 255 days. There is no explanation as to why the appellant which is the Government Department did not make efforts to ensure that the appeal was filed within the period of limitation and why the matter remained unattended at their end for 255 days.

In the case of *Union of India and Ors v. Ramesh Kumar*; (1997) 7 SCC 514 and *P.K. Ramachandran v. State of Kerala & Anr*; (1997) 7 SCC 556 it was observed as under:-

"It would be noticed from a perusal of the impugned order that the court has not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is an essential prerequisite to condonation of delay."

9. A careful reading of the present application, in our view, does not repose confidence and we are unable to record our satisfaction that the explanation for the delay was either reasonable or satisfactory. Accordingly, the present appeal and application for condonation of delay are dismissed.


G.S.SISTANI, J


SANGITA BHINGRA SEHGAL, J

AUGUST 10, 2018/SU