

**HIGH COURT OF JAMMU AND KASHMIR & LADAKH
AT JAMMU**

LPA No.55/2021
CM No. 3141/2021
CM No. 3142/2021

Reserved on: 17.07.2023
Pronounced on: 02.08.2023

Jammu Development Authority

...Appellant(s)

Through :- Mr. Adarsh Sharma, Adv.

v.

Ajay Kumar

.....Respondent(s)

Through :- Mr. Jagpaal Singh, Advocate

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

JUDGMENT

CM No. 3141/2021

(Per-Wasim Sadiq Nargal-J)

1. A Letters Patent Appeal (LPA) under Clause 12 of LPA Rules has been filed against judgment dated 13.03.2018 passed in OWP No. 480 of 2018 titled *Ajay Kumar v. State of J&K and ors.*, whereby the aforementioned writ petition has been disposed of with the directions referred in the judgment itself.

2. The aforesaid LPA is accompanied with application bearing CM No. 3141 of 2021 seeking condonation of delay in which there is delay of 1015 days in preferring the aforesaid LPA against the impugned judgment.

BRIEF FACTS

3. A writ petition came to be filed by the petitioner-respondent herein whereby following reliefs were sought:

“a. Writ of Mandamus directing the official respondents to reinstate the petitioner back to the premises of newly constructed complex of General Bus Stand, and also provide him with the compensation amount of Rs. 20,000 from the date of his vacating the shop i.e. from 19.05.2017 as per the order dated 21.02.2018 passed by this Hon’ble Court in OWP No. 778 of 2018 titled Bharat Communication and ors. v. State and ors.

And,

b. Writ of Certiorari, quashing the notification No. Secy/JDA/PS-1279 dated 27.01.2018 issued by respondent No. 6.”

4. With the consent of learned counsel for the parties, the matter was heard finally and in view of resolution passed in the meeting held on 12.12.2017 under the Chairmanship of Divisional Commissioner, Jammu and as agreed by the learned counsel for the parties, writ petition was disposed of with following directions:

“1. Learned counsel on instructions from the petitioner states that petitioner shall hand over the possession of the shop in his occupation to the officers of the JDA within one week’s time from the date of receipt of certified copy of the order passed today.

2. On receipt of the possession of the shop of the petitioner/his legal representatives, the JDA shall deposit a sum of Rs. 20,000/- per month per shop in the account of the petitioner/his legal representatives by way of first installment within a period of three days from the date of handing over of the shop. Thereafter, the installments for the subsequent month shall be paid on or before 10th of every month.

3. That the JDA as per the policy shall allot the shop to the petitioner/his legal representatives in the ground floor of the proposed multi tier parking cum commercial complex at General Bus Stand, Jammu before putting the shops to auction.”

5. Although the aforesaid writ petition was disposed of with the consent of learned counsel for the parties, yet Jammu Development Authority (JDA) has preferred a belated LPA along with condonation of delay application on the ground that when order passed by learned Single Judge came to the knowledge of the JDA, the same was confronted with the respondent to make him understood that order passed by learned Single Judge has been obtained by not projecting the correct position on the ground that his case is not similarly situated as of the persons who were petitioners in OWP No. 778 of 2017 titled *Bharat*

Communication and ors. v. State and ors., as such, remedial measures were required to be taken. It is further pleaded that upon this, respondent requested that his request for shifting back of his shop from ISBT Narwal to General Bus Stand was pending and being considered by the competent Committee and outcome of the said decision will govern his right and the respondent shall await the outcome of the decision of the Committee. It is in view of the aforesaid position that the appellant-JDA did not challenge the said order. It has been pleaded in the application that respondent, without waiting for the outcome of the decision of the Steering Committee, filed the contempt petition before this Court and the appellant filed statement of facts in the said contempt petition. Further stand of the appellant is that simultaneously Steering Committee rejected the request of the respondent for shifting of his shop from ISBT to General Bus Stand vide order dated 19.08.2019.

6. It is further pleaded by the appellant that having regard to the above facts, especially the decision of the Steering Committee mentioned above, JDA decided to file the present LPA against the order passed by learned Single Judge. However, in the meantime, lockdown on account of COVID-19 came into being, as such, the delay was caused for filing the aforesaid LPA. In view of the aforesaid facts and circumstances, which has been spelt out in the condonation of delay application, appellant has prayed for condoning the delay of 1015 days in filing the LPA.

7. Countervailing the stand taken by the appellant, the respondent is affront with the contention that LPA filed by the JDA is time barred and is preferred only with intent to cause undue inconvenience and harassment to the respondent by not complying with the judgment passed by the learned Single Judge and that too, with the consent of learned counsel for the parties. He further submits that

there is unexplained delay of 1015 days in preferring the aforesaid LPA before this Court. He further submits that if the case of the respondent is not identical with OWP No. 778 of 2017, then what constrained the appellant to prefer the above appeal before this Court within prescribed period of limitation is not forthcoming from the record. It is further submitted that Steering Committee rejected the request of the petitioner for shifting back of shop from ISBT to General Bus Stand vide order dated 19.08.2019 and thereafter, the appeal was preferred on 31.03.2021. It is further submitted that even if it is assumed that decision was taken by the appellant to prefer the aforesaid appeal on 19.08.2019 i.e. after the rejection of the request of the respondent, even then the same was to be preferred within the limitation period but on the other hand, LPA has been preferred on 31.03.2021 and no explanation in this regard has been tendered by the appellant for such a huge delay in preferring the aforesaid LPA. Learned counsel submits that period of outbreak of COVID-19 pandemic would not come to the rescue of the appellant as the case of the appellant does not fall in the said period of limitation which was condoned by the apex Court.

8. Learned counsels on the rival sides have reiterated their respective pleadings in arguments.

9. The only ground which has been project by learned counsel for the appellant in seeking condonation of such huge delay is that appellant-authority confronted the order passed by the learned Single Judge with the respondent by projecting that the said order has been obtained by not projecting the correct position as his case was not similarly situated as that of the persons who were petitioners in Writ Petition No. 778 of 2017. In case, the case of the respondent was not similarly situated, then what prevented the appellant to file the appeal

within the limitation period, is not forthcoming from the record nor any plausible reason/explanation has been tendered for such huge delay.

10. Second reason which has been projected by the appellant is that pursuant to the request of respondent for shifting back his shop to ISBT to General Bus Stand was pending and being considered by the Committee and since outcome of the said decision by the Committee shall govern his right and as such, the respondent waited for the outcome of the said decision. It is in view of the aforesaid stand taken by the appellant that the JDA did not challenge the said order. This ground urged by the appellant is also liable to be rejected on the ground that since the Steering Committee rejected the request of the respondent for shifting of his shop from ISBT to General Bus Stand vide order dated 19.08.2019 and thereafter, the appeal was preferred before this Court on 31.03.2021, i.e. after the rejection of the request of the respondent. Therefore, explanation tendered by the appellant has no basis and cannot be accepted by this Court for condoning such a huge delay in preferring the LPA.

11. From a bare perusal of the judgment passed by the learned Single Judge, it is apparent that same has been passed by the writ Court with the consent of learned counsel for the parties as the learned counsel appearing for JDA neither objected the grounds urged in the writ petition nor sought any time for filing the objections to the said writ petition. Respondent has taken a specific plea that immediately after the judgment passed by learned writ Court, respondent (petitioner therein) approached the JDA with a request to comply the same and consequently, Divisional Commissioner, Jammu vide communication dated 31.05.2018 requested the appellant to take appropriate action in light of the judgment passed by the writ Court. Record further reveals that Housing and

Urban Development Department vide communication dated 07.12.2018 directed the appellant to furnish a detailed report within week's time but nothing has been done by the JDA despite various reminders were issued from time to time. Thus, from a bare perusal of the communication which has been placed on the record by the respondents, it is amply clear that preferring of the LPA before this Court belatedly is an afterthought as same has been preferred only with an intent to avoid the compliance of the judgment passed by the writ Court.

12. The another ground taken by the appellant with respect to outbreak of COVID-19 pandemic and subsequent lockdown would not come to the rescue of the appellant as Hon'ble Supreme Court has stayed the period of limitation w.e.f. 15.03.2020 to 28.02.2022 and the case of the appellant does not fall in the said time bracket as the prescribed period of limitation for preferring the aforesaid LPA was expired much prior to 15.03.2020. Thus, in the light of what has been stated hereinabove, we hold that the appellant has miserably failed to give any justifiable reason/ground for the delay caused in filing the aforesaid appeal.

13. Law is well settled with regard to condonation of delay in filing the appeal and same has been reiterated in judgment passed by the apex Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and ors.** reported as **(2014) 2 SCC (LS) 595**. The relevant paragraph is reproduced as under:

“From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalize injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these

terms are basically elastic and are to be applied in proper perspective to the obtaining fact - situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

14. A similar view has been expressed by the Apex Court in **Brijesh Kumar and ors. v. State of Haryana and ors.** reported as **AIR 2014 SC 1612**, the relevant extract whereof is reproduced below:

“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.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.”

15. An identical view has been expressed by Hon’ble Supreme Court in Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, reported as (2008) 17 SCC 448 in the following manner:

“26. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4th Ed., Vol.28, p.266, para 605, the policy of the Limitation Acts is laid down as follows:

"605. Policy of the Limitation Acts.- The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely,(i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence."

27. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This court in Rajender Singh and others v. Santa Singh and others [(1973) 2 SCC 705] has observed:

"18. The object of law of Limitation is to prevent disturbance and deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches".

28. In Tilokchand Motichand vs. H.B. Munshi [(1969) 2 SCR 824], this court observed that this principle is based on the maxim "interest republicae ut sit finis litum", that is, the interest of the State requires that there should be end to litigation but at the same time law of Limitation are a means to ensuring private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

29. It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their

legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

CONCLUSION

16. Applying the law to the facts and circumstances of this present case and having regard to what has been observed and discussed hereinabove, we do not find any sufficient ground to condone the delay as the same has been caused on account of carelessness and inaction on the part of appellant. Thus, in our considered view, the inordinate delay of 1015 days in filing the appeal cannot be condoned. Hence, the application for condonation of delay stands dismissed. Consequently, the LPA also stands dismissed.

(WASIM SADIQ NARGAL)
JUDGE

(TASHI RABSTAN)
JUDGE

Jammu
02.08.2023
(Paramjeet)

