

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

Reserved on: 29.02.2024
Pronounced on: 06.03.2024

LPA No. 196/2023
CM No. 6558/2023

1. UT of J&K through: Petitioner(s)/Appellant(s)
a. The Chief Secretary, Government of Jammu and Kashmir/Srinagar.
b. The Principal Secretary, Home Department, Government of J&K/Srinagar.
2. The Director General of Police, Jammu and Kashmir, Jammu

Through :- Mrs. Monika Kohli, Sr. AAG

V/s

1. Dharmarth Council through its President as he is Respondent(s)
presently is Maj. General (Rtd) R. S. Jamwal (AVSM), age 68 years R/O 1 D/D Ext. 11 Gandhi Nagar, Jammu.
2. Shri Raghunathji Raghunath Mandir, Jammu.

Through :- Mr. R. S. Thakur, Senior Advocate with
Mr. Ashwani Thakur, Advocate.

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Tashi Rabstan,J:

1. CM No. 6558/2023 is an application filed by the State seeking condonation of delay of 366 days in filing the appeal.
2. In support of her submissions, Mrs. Monika Kohli, Senior AAG appearing for the applicants/appellants submits that the judgment against which the appeal is sought to be filed is passed on 31.08.2022. The certified copy of the said judgment was received on 17.09.2022 after 16 days. The file was processed for sanction and on 08.08.2023, the sanction was obtained. On 01.11.2023, the appeal was filed only after 84 days of obtaining the sanction. Hence, the delay of 366 days is caused in filing the appeal.

3. Learned counsel for the applicants/appellants submits that the delay caused on the part of the State in filing the appeal is neither intentional nor willful.

4. Learned counsel for the applicants submits that the grounds in the appeal are strong on merits and the applicants/appellants are sure to succeed in the appeal and in case the delay is not condoned, there would be grave miscarriage of justice.

5. In support of her submissions, Mrs. Monika Kohli, learned Sr. AAG has placed reliance on the judgments of the Supreme Court in the case of *O. P. Kathpalia v. Lakhmir Singh & Ors*, reported as (1984) 4 SCC 66; *Collector, Land Acquisition, Anantnag v. Katiji* reported as (1987) 2 SCC 107; Appeal (Crl.) No. 485/2005 in the case of *State of Nagaland v. Lipok AO & Ors*, decided on 01.04.2005; and judgment of this court in passed in LPA NO. 26/2023 titled *Union Territory of J&K and Ors. v. Abdul Khaliq and others* decided on 10.08.2023.

6. On the other hand, Mr. R. S. Thakur, learned Senior Advocate assisted by Mr. Ashwani Thakur, Advocate submits that the condonation of delay application is without any basis. According to him, it is fairy tale. There is no ground let alone plausible ground urged in the application which would goad the court to condone the delay. Lastly, it is urged that the condonation of delay application being a charade, may kindly be rejected forthwith with heavy costs.

7. In support of his submissions, learned Senior Advocate Mr. R S Thakur has relied upon the judgments of the Supreme Court of India in the case of *Majji Sannemma @ Sanyasirao v. Reddy Sridevi And Others*, reported at AIR 2022 (SC) 332; and *Sheo Raj Singh v. Union of India & Anr.* reported at AIR 2023 SC 5109.

8. Heard learned counsel for the applicants and perused the application.

9. On perusal of the condonation of delay application, it appears that the application accompanied with appeal is an afterthought. The condonation of delay application accompanied with appeal was filed on 01.11.2023 only after the applicants were got served contempt notices in CCP(S) No. 352/2022 for non implementation of the judgment dated 31.08.2022 passed by the learned Single Judge. Thus, in order to scuttle and thwart the contempt proceedings, they chose to file the present application accompanied with appeal.

10. Further perusal of the condonation of delay application would show that the application has been drafted very casually without application of mind, as we observed that para 11 of the delay condonation application contains the phrase '*acquittal appeal*' which is preposterous and irrelevant here.

11. There is also no plausible and cogent explanation forthcoming in the application. Besides, it is also not a case where the judgment impugned has been passed *ex parte* and the applicants were oblivious of the same. The judgment was passed on 31.08.2022 and the applicants were represented by Mr. Raman Sharma, AAG before the learned Single Judge. No convincing explanation has been tendered in the application except the inter-departmental communications, which could justify the time which the applicants have taken in filing the appeal.

12. It is a sordid state of affairs to note that the applicants took clear 11 months to obtain sanction from competent authority. The reasons shown for delay in the application in our view are not worth-having, that could sway this court and dissuade us to condone the delay.

13. We are fortified in our view by the judgment of Hon'ble the Supreme Court in appeal bearing Civil Appeal No. 2474-2475 of 2012 (Arising out of SLP (C) Nos.7595-96 of 2011 dated 24.02.2012) titled *Office of the Chief Post*

Master General & Ors. V. Living Media India Ltd. and Another, wherein the Supreme Court opined on no proper explanation for delay as:-

“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 bona fide 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.”

14. Hon’ble the Supreme Court while dismissing ***SLP (Civil) Diary No(s).19846/2020*** titled as ***Union of India Vs. Central Tibetan Schools Admin & Ors.***, on 04.02.2021 on account of delay observed as under:-

“We have repeatedly being counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to

be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No. 22605/2020 decided on 11.01.2021].....”

15. Hon’ble the Supreme Court in *Majji Sannemma @ Sanyasiroa v. Reddy Sridevi & others*, AIR 2022 SC 332 in paragraphs 7.4 and 8 has held as:

“7.4. In the case of *Basawaraj (supra)*, it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it

has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.”

16. In ***Sheo Raj Singh v. Union of India & Anr***, reported at AIR 2023 SC 5109, the Supreme Court in Para 29 of the above judgment has held as:

“29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon

the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

17. Having regard to above referred judgments and facts of the case, we hold that the applicants have filed this application in a cavalier manner as a routine matter and that too without application of mind. The lackadaisical tendency exhibited by the State is writ large in the present case. Despite the availability of huge manpower and machinery at its disposal, the State has dealt

with the matter with supine indifference. The reasons for delay are not forthcoming from the application. Much to our chagrin, the State has taken a year in obtaining sanction. Even after obtaining sanction, it has taken 84 days to file the appeal. The reason for delay on this count is not whispered in the application to our utter surprise, let alone satisfactorily explained despite the fact that the applicants were supposed to explain each and every day's delay.

18. The judgments relied upon by learned Sr. AAG are quite distinguishable as they are on different facts, and are not applicable to the present case.

19. In view of the facts and circumstances of the case, discussions made hereinabove and the settled law position enunciated above, we view that delay of 366 days in filing the appeal is not satisfactorily explained. The condonation of delay application, in view of what has been stated and analyzed above, is accordingly dismissed.

20. CM No. 6558/2023 is dismissed.

21. As a result, the appeal is dismissed and the interim direction granted by this court on 06.11.2023 is vacated.

22. There shall be no order as to costs.

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Jammu:
06.03.2024
Raj kumar

Whether the order is speaking?

Yes/No.

Whether the order is reportable?

Yes/No.