

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(2156/2023) in LPA no. 68/2023
 CM no. 2157/2023

UT of J&K and anr.

...Petitioner/ Appellant(s)

Through: Mr. Mubeen Wani, Dy. AG

V/s

Mst. Misra and others

...Respondent(s)

Through: Mr. Shakir Haqani, Advocate

CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE.
HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE.

ORDER

1. The instant application has been filed by the applicants/appellants, who were the respondents in the writ petition, seeking condonation of delay of 1374 days in filing the letters patent appeal against the judgment and order dated 15.05.2019 passed by the learned Single Judge in SWP no. 576/2016 c/w SWP no. 289/2017 filed by the petitioners, who are now the respondents herein.

2. It is contended by Mr. Mubeen Wani, learned Deputy Advocate General, that the delay caused in filing the appeal is neither intentional nor wilful. However, the same is caused because of the procedural formalities. It is also submitted that one of the reason for not filing the appeal in due course of time was due to the imposition of restrictions on account of COVID-19 Pandemic. It is submitted that though the applicants/appellants have a good case on its merits, therefore, the delay be condoned.

3. It is submitted that the applicants/appellants received copy of the judgment dated 15.05.2019 and complied Part-II of the judgment vide Order No. 237-DHHK of 2021 dated 27.05.2021. So far as the Part-I of the judgment is concerned, it is submitted that the Director, Handicrafts, J&K Srinagar, took up the matter with the General Administration Department vide his communication dated 15.03.2023 for accord of necessary sanction to file the appeal. Thereafter, the matter was forwarded to the Department of Law, Justice and Parliamentary Affairs for legal advice and the Law Department, after examining the impugned judgment, accorded sanction to file the LPA vide sanction dated 31.03.2023. It is submitted by learned counsel for the applicants/appellants that in the process, the appellants were required to collect the records from the subordinate Offices and also to wait for the legal advice from the Department of Law, Justice and Parliamentary Affairs. It is further submitted that the consideration of the matter and decision to file appeal was delayed due to complete lockdown ordered by the Govt. due to COVID-19 and the Supreme Court extended the limitation period w.e.f. 15th March, 2020; that law is well established that law of limitation should be liberally construed to do the substantial justice and when the technicalities and substantial justice are pitted against each other, the cause of substantial justice must prevail.

4. On the other hand, learned counsel for the respondents has shown strong reservation in case the delay is condoned. He submitted that delay caused in approaching the court is huge, unexplained and the reason given for delay are nothing but charade.

5. Heard learned counsel for the parties and perused the application.

6. On perusal of the application seeking condonation of delay it appears that the applicants are not serious in filing the appeal within time as they might have been in deep slumber because the judgment impugned is of the year 2019 and the application seeking condonation of delay in filing the appeal was filed only on 19.04.2023 which depicts that the applicants have acted in a very nonchalant manner. The cavalier attitude on the part of the applicants is writ large as they have not bothered themselves to even give specific dates, for example, date of receiving certified copy of the judgment which is conspicuous

by its absence. A bare perusal of the dates given in the application shows that the delay explained is on vague grounds. There is no sufficient cause shown, let alone plausible and cogent explanation for seeking condonation of delay. In the year 2019 the impugned judgment has been passed and in the year 2023 i.e., after four years, the appellant no.2 has took up the matter with the Administration Department for accord of necessary sanction for filing the appeal. No sufficient cause is forthcoming which would sway this Court but perfunctory, which could justify the time which the applicants have taken in filing the appeal. The judgment has been passed after hearing learned counsel for both the parties and not in absence of learned counsel for the respondents/appellants herein, but the appellants have not bothered to file the appeal in due time. The appellants-UT, for instance, have given reasons which only show that they have proceeded in the matter in a perfunctory manner and excessively adhered to the formalities. No cogent and plausible grounds have been taken in the application which would entail delay in filing the appeal and the application has been drafted in a very casual and vague manner.

7. 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 appellants-UT 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.

8. It is trite that delay in filing appeal after the statutory period of limitation prescribed cannot be condoned as a matter of course. The party seeking condonation of delay was required to satisfy the Court that there was sufficient cause justifying condonation of delay. Merely saying that the delay was on account of procedural aspect, is not a sufficient cause to condone the delay. The parties seeking condonation of delay, therefore, are required to convince the Court that there was a sufficient cause justifying the condonation of delay. Merely saying that the delay was on the ground of procedural formalities, is not a sufficient cause to condone the delay.

9. The Hon'ble Supreme Court in case ***Postmaster General and others v. Living Media India Ltd. And anr (2012)3 SCC 563***, while dismissing the Special

Leave Petition due to delay of 435 days has held that merely because the Government is involved, different yardsticks cannot be laid down for condoning the delay.

10. In another case titled ***Govt. Of India v. Md. Wasim Akram reported in SLP (Cri) Diary No. 10760/2020***, the Hon'ble Supreme Court while dismissing the application seeking condonation of 254 days delay with costs of Rs. 25,000/- has held that the threshold bar of delay and laches cannot be ignored.

11. In case ***State of Madhya Pradesh and Others v. Bherulal*** reported in ***(2020)10 SCC 654*** the Hon'ble Apex Court has held that unavailability of documents and the process of arranging the documents and bureaucratic process works cannot be a ground to condone the delay in filing of an appeal by the State. In the said case, the delay of 663 days delay was not condoned and the SLP was dismissed with costs of Rs. 25,000/-.

12. In yet another case reported in ***SLP (Civil) Diary No(s). 19846/2020*** titled ***Union of India v. Central Tibetan Schools Admin and ors.*** the Hon'ble Apex Court has held as under:

“We have repeatedly been 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 assist them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with a 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 into 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 and ors. v.

Bheru Lal (SLP(c) Diary no. 9217/2020 decided on 15.10.2020 and the State of Odisha and ors. v. Sunanda Mahakude (SLP(c) Diary no. 22605/2020 decided on 11.01.2021.

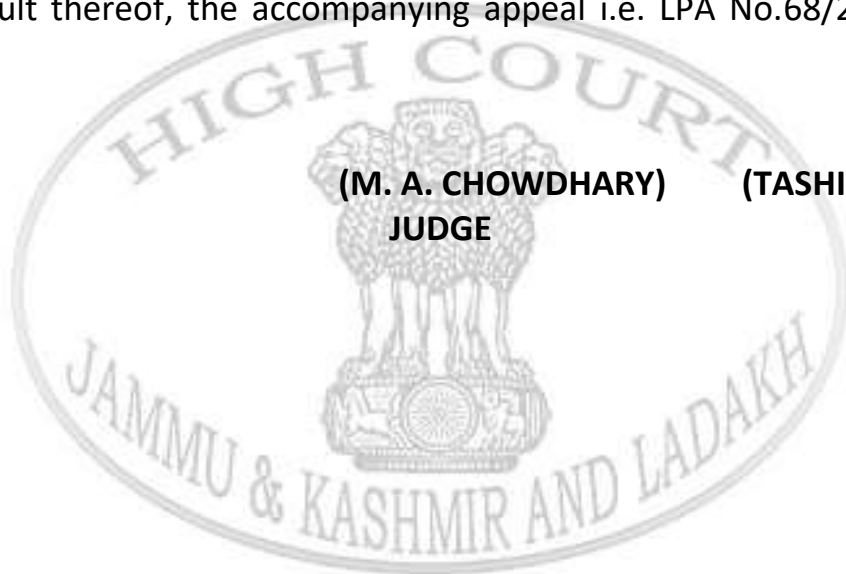
13 Having regard to above referred judgment, it suggests that the applicants- UT has perceived delay as a non serious matter and its lackadaisical tendency is exhibited by its nonchalant manner in which the appellants have pursued the matter and allowed the file to move from table to table for months together.

14. In view of the facts and circumstances of the case, observations made hereinabove and the settled law position, we are not satisfied with the explanation given by the applicants/UT for condoning the huge delay of 1374 days in filing the appeal. The application seeking condonation of delay is dismissed.

15. As a result thereof, the accompanying appeal i.e. LPA No.68/2023 is also rejected.

SRINAGAR
29.04.2024

Yasmeen, Secy



(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
JUDGE