

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(5346/2023) in LPA no. 166/2023

Reserved on : 15.05.2024
Pronounced on : 22.05.2024

M/s Aisha Constructions ...Petitioner/ Appellant(s)

Through: Mr. R. A. Jan, Sr. Advocate with
Mr. Sharik Reyaz Jan, Advocate

V/s

Jammu and Kashmir Cricket Association

...Respondent(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Achyut Dubey, Advocate

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

ORDER
22.05.2024

Per Tashi-J

1. The present application has been filed by the applicant/appellant, who was the petitioner in the writ petition, seeking condonation of delay of 176 days in filing the letters patent appeal against the judgment and order dated 30.12.2022 passed by the learned Single Judge in OWP no. 1521/2018.

2. It is contended by Mr. R. A. Jan, learned Senior Counsel appearing for the applicant/appellant that the delay caused in filing the appeal is neither wilful nor deliberate, however, the same is caused due to the circumstances beyond the control of the applicant/appellant. Learned counsel has further submitted that the applicant/appellant has a good case on its merits, therefore, the delay be condoned.

3. It is submitted in the application that the appellant had to stay with her children at Bangalore in order to facilitate their academic pursuit and could return only in the last week of July, 2023. It is further submitted that on returning back to the Valley from Bangalore, the applicant/appellant learnt about the dismissal of the writ petition preferred by her and immediately sought legal advice from her counsel and on the basis of the

said legal advice, the applicant/appellant initiated the process for filing Letters Patent Appeal against the impugned judgment and order dated 30.12.2022. It is also submitted by the applicant/appellant that inspite of putting in all the efforts, the appeal could be filed only on 07.08.2023.

4. On the other hand, learned senior 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 reasons given for delay are nothing but charade. Learned counsel further submitted that the applicant/appellant has made bald and factually incorrect assertions before this Court with regard to her stay in Bangalore in connection with the academic pursuit of her children as she has not given any particulars with respect to her children and the courses being pursued by them. He further submitted that nothing has been placed on record by the applicant/appellant with respect to her departure from Kashmir to Bangalore and her subsequent return to Kashmir in the last week of July, 2023. It is submitted that a clumsy attempt has been made by the applicant/appellant to explain the delay on non-existent grounds. Learned counsel further submitted that the present appeal has been filed as an afterthought and in order to cover the delay, the story of applicant being in Bangalore has been concocted and the delay in filing the appeal was not only intentional but deliberate as well.

5. Heard learned counsel for the parties and perused the application seeking condonation of delay.

6. On perusal of the application seeking condonation of delay, it appears that the applicant/applicant was not serious in filing the appeal within time as the judgment impugned has been passed on 30.12.2022 and the application seeking condonation of delay in filing the appeal was filed only on 23.08.2023 which depicts that the applicant has acted in a very nonchalant manner. The cavalier attitude on the part of the applicant is writ large as she has not bothered herself 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 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. Admittedly, there has been a long-running delay of 176 days in filing the appeal, but no satisfactory explanation has come forward on that count except for routine play of words and phrases. No doubt, a liberal approach is meant to be adopted in the matter of condonation of delay provided there is no deliberate negligence/inaction or lack of bonafides on the part of the applicant. But, in the instant case, the applicant, at his pleasure, took his own time to formulate an opinion that the appeal is to be filed.

7. It cannot be disputed that the law of limitation has to be applied with its intent and purpose as prescribed. The Courts cannot come to the aid and rescue of an indolent applicant, whose application for condonation of delay does not even spell out sufficient cause. The approach of the applicant in making such application is casual and cryptic and taking it for granted that condonation of delay in legal matters is a matter of just demand and supply.

8. 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."

9. 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."

10. 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."

11. The Hon'ble Supreme Court in case of **Basawaraj and Another versus Special Land Acquisition Officer**, AIR 2014 SC 446, while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the 8 (2013) 14 SCC 81 Page 11 of 17 condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

12. Besides, it is also not a case where the judgment impugned has been passed exparte and the applicants were oblivious of the same. The judgment was passed on 04.06.2018 and the applicants were represented

by their counsel before the learned Single Judge. No convincing explanation has been tendered in the application except the explanation that the delay was on the ground of procedural formalities.

13. In the latest judgment passed by the Supreme Court on the same issue in the case in hand in ***SLP (C) 25032 of 2014 titled State of UP v. Mohan Lal dated 03.05.2024***, the Supreme Court has observed that the explanation seeking condonation of huge delay cannot be accepted, when it is not disputed that the petitioner-State appeared before the High Court and was heard before passing of the impugned order, so it was within their knowledge.

14. In view of the facts and circumstances of the case, observations made hereinabove and the settled law, we are not satisfied with the explanation given by the applicant for condoning the delay of 176 days in filing the appeal. The application seeking condonation of delay is , as such, dismissed.

15. As a result thereof, the accompanying appeal i.e. LPA No.166/2023 is also rejected.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
JUDGE

SRINAGAR
22..05.2024
Yasmeen, Secy.

