

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

CM(6584/2022) in LPA no. 230/2022
CM no.6585/2022

UT of J&K and anr.

...Petitioner/ Appellant(s)

Through: Mr. Faheem Nissar Shah, GA
V/s

Naseema Parveen

...Respondent(s)

Through: Mr. Arshid Ahmad, Advocate vice
Mr. P. S. Ahmed, Advocate

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

ORDER
08.05.2024

Per Tashi-J (oral)

1. The present application has been filed by the applicants/appellants, who were the respondents in the writ petition, seeking condonation of delay of 1546 days in filing the letters patent appeal against the judgment and order dated 04.06.2018 passed by the learned Single Judge in OWP no. 1003/2009 filed by the petitioner, who is now the respondent herein.

2. It is contended by Mr. Faheem Nissar Shah, learned Government Advocate, that the delay caused in filing the appeal is neither intentional nor deliberate, however, the same is caused because of the procedural formalities. Learned counsel has further submitted that the applicants/appellants have a good case on its merits, therefore, the delay be condoned.

It is submitted in the application that the authorities took time to decide as to whether the judgment/order be appealed against or not and also because of the procedural formalities the delay was caused. It is submitted by the learned counsel that such kind of delay has been condoned by the Supreme Court and in case delay is not condoned, a serious prejudice will be caused to the interests of the State. It is also submitted that certain amount of latitude is not impermissible and the Government and Private parties cannot be put on same footing in the matters of condonation of delay.

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 reasons given for delay are nothing but charade.

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 applicants were not serious in filing the appeal within time as they might have been in deep slumber because the judgment impugned is of the year 2018 and the application seeking condonation of delay in filing the appeal was filed only on 27.11.2022 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 and the date when sanction was accorded by the Law Department for filing appeal against the impugned 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. 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. It is trite that delay in filing appeal after the statutory period of limitation prescribed cannot be condoned as a matter of course. 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.

8. 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."

9. 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]....."

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 latches cannot be ignored.

11. In case ***State of Madhya Pradesh & ors. v. Bherulal*** reported in ***(2020) 10 SCC 654*** the Hon'ble Apex Court has held that availability 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 was not condoned and the SLP was dismissed with costs of Rs. 25,000/-.

12. 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 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. 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 four years to decide whether the appeal against the impugned judgment should be filed or not. 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.

15. 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 applicants/UT for condoning the huge delay of 1546 days in

filing the appeal. The application seeking condonation of delay is , as such, dismissed.

16. As a result thereof, the accompanying appeal i.e. LPA No.230/2022 is also rejected.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
JUDGE

SRINAGAR
08.05.2024

Yasmeen, Secy

