

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

COD no. 7175/2023

In

LPA no. 237/2023

UT of J&K and others

...Petitioner/ Appellant(s)

Through: Mr. Syed Musaib, Dy. AG

V/s

Hilal Leather and Fur House and ors.

...Respondent(s)

Through: Mr. M. A. Qayoom, Advocate

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE.

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE.

ORDER

07.05.2024

(Per Tashi-J)

1. The application in hand has been filed by the applicants/appellants who are the respondents in the contempt petition, seeking condonation of 184 days delay in filing the letters patent appeal against the interlocutory order dated 17.03.2023 passed by the learned Single Judge in contempt petition bearing CCP(S) no. 348/2019 filed by the petitioners, who are the respondents herein.

2. It is submitted by Mr. Syed Musaib, learned Deputy Advocate General, that after obtaining certified copy of the order dated 17.03.2023, steps for filing the appeal were taken and copy of the said order was forwarded to the SKIMS who in turn forwarded the same to the Administrative Department. The Administrative Department forwarded the said order dated 17.03.2023 to the Law Department for opinion and the Law Department accorded sanction on 22.08.2023 and advised the department to file LPA against the order. It is further submitted by the learned Counsel for the applicants/appellants that

certain clarifications were required to be sought from the department which were received after some time and, therefore, delay in filing the appeal was caused.

3. Learned counsel for the respondents resisted the application seeking condonation of delay and submitted that the present appeal has been filed alongwith the application seeking condonation of delay against an interlocutory order dated 17.03.2023 which has already been implemented. The said contempt petition is still pending before the Court and the appellants herein are time and again seeking adjournments so as to comply with the directions passed by the learned Single Judge in WP(c) no. 832/2023. Therefore, the appeal has no merit and has been filed just to avoid the contempt proceedings.

4. The applicants/appellants have filed response in opposition to the objections filed by the respondents asserting therein that the order dated 17.03.2023 lacks legal foundation. It is further submitted that though the order dated 17.03.2023 has been ostensibly complied with by the applicants/appellants, the same needs clarification regarding implementation of court's directives.

4. Heard learned counsel for the parties and perused the application for condonation of delay as well as the objections filed by the other side and response thereto.

5. On perusal of the application seeking condonation of delay, it appears that the order under appeal has been passed on 17.03.2023 in the contempt petition bearing CCP(S) no. 348/2019 and the application seeking condonation of delay in filing the appeal was filed only on 16.11.2023 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 cared a bit to even give specific dates, for example, date of receiving the certified copy of the order, which is conspicuous by its absence. The delay occurred is not at all explained. There is no cause shown, let alone plausible and cogent sufficient cause for seeking condonation of delay.

6. Ostensibly, the present case is a fit case which depicts the way the appellants/Government involves its man and machinery to pursue its cases

before the Court. It is pellucid that the appellants/UT are entangled in excessive red-tapism in this case. It is trite that delay in filing the 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 sufficient cause to condone the delay.

7. 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.

8. 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/-.

9. 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.

10. 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.

11. 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. In the present case, there is a delay of 184 days in filing the appeal. The learned Single Judge has passed the impugned order dated 17.03.2023 in CCP(S) 348/2019 after hearing both the parties. In the application seeking condonation of delay, no plausible explanation has been put forth by the appellants for such a delay. Therefore, the present application suffers from inordinate delay and laches and the same is liable to be dismissed.

12. In view of what has been stated above and in light of the law laid down by the Hon'ble Apex Court referred to hereinabove, the present application seeking condonation of delay of 184 days is dismissed. Consequently, the appeal shall also stand dismissed.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
JUDGE

SRINAGAR
07.05.2024

Yasmeen, Secy

Yasmeen Rashid
2024.05.10 13:19