

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CAN 1 of 2023

CAN 2 of 2023

CAN 3 of 2024

In

WPA 13153 of 2005

Sri Sripati Kumar Shaw

Vs

The Kolkata Municipal Corporation & Ors.

For the Petitioner : Mr. Anindya Lahiri,
Mr. Saikat Sen,
Mr. Anish Chakraborty.

For the KMC : Mr. Biswajit Mukherjee,
Mrs. Sima Chakraborty.

For the Respondent No.6 : Mr. Sounak Bhattacharya,
Mr. Sounak Mandal.

Hearing concluded on : 20.11.2024

Judgment on : 20.11.2024

Shampa Dutt (Paul), J.:

1. CAN 1 of 2023 is an application for recalling of the order dated 25.06.2015 and CAN 2 of 2023 is an application under Section 5 of the Limitation Act praying for condonation of delay of 1881 days (one thousand eight hundred eighty one days) in filing the application for recalling the order dated 25.06.2015.
2. Affidavit-in-opposition and reply thereto have been filed along with a supplementary affidavit.
3. On perusal of the materials on record and on hearing the learned counsels for all the parties, the following is evident:-
 - i) *The writ petition being WPA 13153 of 2005 was dismissed for default by an order dated 25.06.2015. It is submitted by the learned counsel for the petitioner that the petitioner was not aware of the order of dismissal and subsequently due to ill advice of several legal counsels and personal difficulties which were serious in nature, he was unable to file this application for restoration, within the period of limitation.*
 - ii) *The writ petitioner has prayed for urgent restoration of the writ petition in view of the notice dated 5th November, 2024, annexed at page 11 of the supplementary affidavit. The matter was moved for listing for the first time at 2 pm on 19.11.2024 after almost 14 days of the said notice.*

4. Learned counsel for the private respondents had relied upon the order dated 12.11.2021 of a co-ordinate Bench of this Court passed in WPA 17970 of 2021 wherein the Court held as follows :-

“WPA 17970 of 2021

Dated 12.11.2021

In view of fair submissions of Mr. Bhattacharyya, learned advocate for the petitioner, on instructions, that the petitioner undertakes to demolish the unauthorized portion as per direction of the competent authority of the Kolkata Municipal Corporation dated October 25, 2002, the relevant portion of which is at page 20 of the writ petition, the writ petition is disposed of with the following directions: -

i. In view of the finality attained by the order of the Court dated October 25, 2002, nothing remains to be decided with regard to the proceeding initiated by the Kolkata Municipal Corporation for demolition of the unauthorized portion of premises no. 393/3F/4, Prince Anwar Shaw Road.

ii. As the petitioner prays for some breathing time to bring down the unauthorized first floor in compliance of the order, three months time from today is given to the petitioner to demolish the same at his own costs.

*iii. On the expiry of the aforementioned period of three months, the Corporation shall be at liberty to demolish the structures and recover the costs from the petitioner. The order of partial demolition was passed. The same was challenged before the Building Tribunal. **The Tribunal affirmed the order of demolition and a writ petition was preferred which was dismissed for default. No steps were taken for restoration. Thus the petitioner has accepted the order of demolition.***

iv. Other portions of the order with regard to retention shall be reached to its logical conclusion as the petitioner has already paid retention charges within a month from such demolition

subject to compliance of the directions of the special officer building.

v. As the petitioner has undertaken before this Court to comply with the order of the Corporation, no coercive measure shall be taken for the aforementioned three months as indicated in the order itself.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

Parties are directed to act on the server copy of this order.

Shampa Sarkar. J”

5. The private respondent has placed another order of a co-ordinate Bench of this Court dated 29th August, 2024 in WPO 821 of 2024. It appears that the notice dated 14.08.2024 issued by the Kolkata Municipal Corporation praying for police help to carry out the said demolition was served upon the writ petitioner herein, who challenging the said notice had moved the said writ petition. The order is reproduced herein :-

“WPO 821 of 2024

Dated 29th August, 2024

The Court: The petitioner suffered a demolition order issued by the Kolkata Municipal Corporation on October 25, 2002. He preferred an appeal before the Building Tribunal which was dismissed on June 4, 2005. He challenged the demolition order before this Court by filing a writ petition (WPA 13153 of 2005) and obtained a stay order.

The private respondent filed WPA 3108 of 2020 to implement the demolition order dated October 25, 2002. The said writ petition was disposed of in May, 2023, directing, inter alia, to act in

accordance with the demolition order dated October 25, 2002.

Subsequently, WPA 13153 of 2005 was dismissed for default. The petitioner filed an application for restoration and an application for condonation of delay in filing the restoration application.

In connection with WPA 3108 of 2020, at the instance of the private respondent, a contempt application seeking implementation of the demolition order passed by the Building Tribunal, was filed. The said contempt application is pending.

The petitioner has filed this present writ petition challenging the action on the part of the Kolkata Municipal Corporation in attempting to implement the demolition order by a fresh notice dated 14th August, 2024.

I am not inclined to entertain this writ petition on the ground that any order staying the hand of the Corporation to proceed with the demolition work will amount to an interference with the contempt jurisdiction of a Coordinate Bench.

Learned advocate appearing for the petitioner has placed strong reliance on a judgment passed by a Division Bench of this Court in M.A.T.1620 of 2024 (CAN 1 of 2024) (Sk. Samsad Hossain Warsi & Anr. Vs. Mahinuddin Khan & Ors.).

I do not find any application of the said judgment in the facts of this case.

Accordingly, WPO/821/2024 is dismissed.

Kausik Chanda. J"

- 6. It appears that in spite of the said notice** dated 14.08.2024, the writ petitioner did not take any step for having the present matter heard on urgent basis and without moving this Court for restoration has filed the said application before another Bench of this High Court.

- 7.** The present writ petition is of the year 2005 challenging an order of demolition dated 25.10.2002. The matter is pending adjudication for about 20 years. The grounds for the delay in the present case are also not sufficient cause for condoning such delay. Prayer for restoration has been made only in the year 2023 after almost nine years. The cause shown is prima facie not sufficient in view of the fact that the petitioner has been approaching the Writ Courts under various pretext praying for orders without taking any diligent steps for restoration of the present writ petition.
- 8.** By placing an order dated 25.01.2023 in WPA 20028 of 2021, it is submitted by the writ petitioner that the writ petitioner's representation was to be considered by the Kolkata Municipal Corporation but the order has not been complied with. The said writ petition was preferred in the year 2021, it is submitted by the learned counsel for the writ petitioner that as the writ petitioner was pursuing his relief in a different forum, he is entitled to the benefit of the condonation of delay for the said period. It appears that the order dated 22.11.2021 in WPA 17970 of 2021 was not placed before the Court in WPA 20028 of 2021.
- 9.** It thus appears that though the writ petitioner challenged the notice dated 14th August, 2024 by filing another writ petition being WPO 821 of 2024, the writ petitioner did not choose to come before this Court and pray for restoration of the present writ petition. The writ petitioner has been approaching various Courts on one pretext or the other and

has been **successfully avoiding the demolition order for the last 20 years.**

10. The order dated 22.11.2021 passed in 17970 of 2021 which has been reproduced earlier has in substance made the present writ petition infructuous. In spite of the said direction of the Court permitting the writ petitioner three months time as breathing space against demolition, the writ petitioner by suppressing the said order has been approaching different Writ Courts praying for separate reliefs. In spite of the order dated 14.08.2024 being within his knowledge, he has chosen not to come before this Court, where his prayer for restoration is pending.

11. The learned counsel for the writ petitioner has relied upon the decision of Hon'ble Apex Court in the matter of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.* reported in (2013) 12 SCC 649, wherein the court held:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 *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 legalise injustice but are obliged to remove injustice.*

21.2 *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.*

21.3 *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4 *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.*

21.5 *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6 *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.*

21.7 *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8 *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.*

21.9 *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant F 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.*

21.10 *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 litigation.*

21.11 *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.*

21.12 *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.*

21.13 *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

12. This Court relies upon the judgment of the **Hon'ble Supreme Court in Pathapati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA)** reported in **(2024) 4 SCR 241 : 2024 INSC 286**, wherein the court held:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

13. Accordingly, in view of the discussions made hereinabove, the conduct of the writ petitioner and the cause shown for the delay of 1881 days being not sufficient, which clearly shows lack of bona fide on the part of the writ petitioner/applicant, the concept of liberal approach in the present case is not applicable.
14. There has been in-ordinate delay in preferring the present application, the conduct of the writ petitioner by approaching different Courts for orders at different stages against the said demolition without any diligent approach for restoration of the present case for last 20 years and also continuing with the present case in spite of the order in WPA 17970 of 2021, goes to show that the writ petitioner is abusing the process of law and such misrepresentation is to be dealt with strictly in the interest of justice.
15. Considering the said conduct of the writ petitioner, there has to be an end to litigation in such proceedings and his right has now ceased to exist. ***(Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649 (Supra)) and Pathapati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA) (Supra))***

16. Accordingly, the application being CAN 2 of 2023 praying for condonation of delay stands rejected. Consequently the application being CAN 1 of 2023 praying for restoration of the writ petition also stands dismissed.
17. The application being CAN 3 of 2024 also stands disposed of.
18. All applications connected thereto stand disposed of.
19. Interim order, if any, stands vacated.
20. Let a copy of the judgment be sent to the learned trial Court for compliance.
21. Urgent Xerox certified copies of this judgment, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)