

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 19th January, 2015.

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LPA No.2514/2005

UNION OF INDIA & ANR.

..... Appellants

Through: Mr. Ruchir Mishra & Mr. Mukesh
Kumar Tiwari, Advs.

Versus

M/S MAHALAXMI SAW MILLS PVT. LTD. Respondent

Through: Mr. S.K. Rungta, Sr. Adv. with Mr.
Prashant Singh, Adv.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

**CMs No.13486/2014 & 13487/2014 (for restoration of the appeal dismissed
in default of appearance on 28th January, 2010 and for condonation of four
years four months delay in applying therefor)**

1. Notice of these applications was issued and we have heard the counsel for the appellants and the senior counsel for the respondent.
2. The appellants i.e. the Union of India and the Land and Development Officer (L&DO) had preferred this intra-court appeal against the judgment dated 10th June, 2005 of the learned Single Judge of this Court of allowing W.P.(C) No.2546/2003 filed by the respondent by quashing the claim of the appellants for unearned increase in accordance with the terms and conditions of the perpetual lease of land underneath property No.3/13, Industrial Area,

Kirti Nagar, New Delhi. The appeal was entertained and notice thereof issued. The appeal, on 9th January, 2007, was admitted for hearing and ordered to be listed for hearing in the category of 'Regular Matters' in the week commencing from 5th March, 2007. On 9th January, 2007, the counsel for the respondent also made a statement that he would not press for compliance of the order of the learned Single Judge. It appears that the appeal did not come up for hearing in the week commencing from 5th March, 2007 or at any time thereafter till 28th January, 2010 when none appeared for either of the parties. The appeal was accordingly dismissed in default of appearance. These applications for restoration with condonation of delay in applying for restoration were filed in or about July / August, 2014 and came up on 20th August, 2014 when notice thereof was issued.

3. The respondent has opposed the application for condonation of delay as well as the application for restoration of the appeal by contending; i) that the delay is too long; ii) that the appellants have falsely stated in the applications that they were not aware of the appeal having been dismissed; and, iii) that the respondent in fact had delivered demand letters dated 20th January, 2011, 27th May, 2013, 3rd June, 2013, 31st October, 2013 and

14th March, 2014 in the office of the L&DO for compliance of the order of the learned Single Judge, also citing the dismissal of the appeal.

4. The senior counsel for the respondent in opposition has relied on ***Brijesh Kumar Vs. State of Haryana*** 2014 (4) SCALE 50 upholding the judgment of the High Court of refusing to condone the inordinate delay of ten years two months and twenty nine days in preferring the appeal under Section 54 of the Land Acquisition Act, 1894.

5. We have considered the matter and are of the opinion that in the present facts and circumstances, a sufficient cause is made out for condoning the delay and for restoring the appeal, for the following reasons:-

- (a) The appeal was admitted for hearing and though ordered to be listed for hearing in the week commencing from 5th March, 2007 but did not come up for hearing and came up for hearing suddenly on 28th January, 2010 when it was dismissed in default without even keeping it on board for some time to enable the counsels to have another chance to notice the same in the cause list of this Court.
- (b) It is not as if the respondent noticed that the appeal had come up for hearing on 28th January, 2010; none appeared for the respondent also on that date.

- (c) The advocate who had filed and was pursuing the appeal on behalf of the appellants was in July, 2011 designated as a Senior Advocate of this Court and it can be presumed, would have ceased to be the advocate for the appellants and hence the dismissal of the appeal remained to be noticed.
- (d) Not only so, the said advocate was on 17th April, 2013 elevated as a Judge of this Court.
- (e) Though the appeal was dismissed on 28th January, 2010 and though the respondent claims to have, though not on that date, subsequently become aware of the said dismissal but the respondent did not seek enforcement of the order of the learned Single Judge, stay of enforcement whereof stood vacated on dismissal of the appeal and applied for enforcement only in or about May, 2014 (Cont.Cas.(C) No.342/2014) and immediately whereafter these applications were filed; though we enquired from the senior counsel for the respondent, the reason for the respondent also for over four years not seeking enforcement of the order of the learned Single Judge but no reply was forthcoming; the respondent itself was thus lackadaisical and cannot deprive the appellants from condonation of delay.

(f) As far as the argument of the respondent having demanded compliance of the order of the learned Single Judge by writing letters to the appellants is concerned, it cannot be lost sight of that owing to the large number of officers in government offices and allocation of work between them, generally one hand does not know what the other is doing; thus though ordinarily from such letters, knowledge of dismissal would have been concluded but such letters received in government offices often are simply filed without proper application of mind thereon; moreover it is common knowledge that litigation cell which pursues the matters is entirely different. The Supreme Court in *State of Haryana Vs. Chandra Mani* (1996) 3 SCC 132 observed that it is common knowledge that on account of impersonal machinery and the inherent bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delays on the part of State occur and that since the State represents collective cause of the community, grant of certain amount of latitude to it is not impermissible. It was further held that factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process and the Courts should decide the

matters on merit unless the case is hopelessly without merit. The same thought was echoed earlier in *Collector, Land Acquisition, Anantnag Vs. Mst. Katiji* (1987) 2 SCC 107. Both the said judgments were recently followed in *Delhi Development Authority Vs. Bhola Nath Sharma* (2011) 2 SCC 54.

- (g) The appeal entails a question of law of larger public ramifications; the learned Single Judge, in the judgment impugned in the appeal has held that notwithstanding a clause in the perpetual lease deed to the effect that no transfer of the land leased or of the construction raised thereon could be effected without prior permission of the L&DO, which the appellant L&DO would be entitled to refuse in its absolute discretion or grant subject to payment of 50% unearned increase, the demand of the appellant L&DO for such unearned increase on conversion of the partnership firm which was the perpetual lessee into a private limited company was not payable because there was no assignment; such questions arise and are likely to arise in large number of other cases and need to be considered in appeal especially when the appeal was admitted for hearing and the operation of the order of the learned Single Judge stayed on the statement of the respondent itself; and,

(h) The respondent in the present case has not averred any loss on account of delay.

6. The Supreme Court in judgment dated 21st July, 2014 in Civil Appeals No.6599-6601/2014 titled *Dhiraj Singh Vs. Haryana State*, in the context of appeal for enhanced compensation for land acquisition, held that substantive rights should not be allowed to be defeated on technical grounds by taking hyper technical view of the self-imposed limitations and that equities have to be balanced. Finding in that case that the only effect of appeal could be to deprive the appellants therein from the interest for the period of delay, the delay was condoned.

7. We accordingly, allow these applications by condoning the delay in applying for restoration and by restoring the appeal dismissed in default on 28th January, 2010 to its original position. Axiomatically, the interim arrangement in force also stands restored.

The applications are disposed of.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

JANUARY 19, 2015

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