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

\+ *Date of decision : July 30, 2015*

\+ **LPA 822/2012**

DELHI DEVELOPMENT AUTHORITY ..... Appellant
Represented by: Ms.Shobhana Takiar, Adv.

versus

DIGVIJAY SINGH ..... Respondent
Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.(Oral)

CM 21046/2012

1. None appears for the respondent even on the second call.

2. There is a delay of 269 days in filing the appeal. Seeking delay to be condoned, as would be expected from a statutory body, the usual facts had been stated as the sufficiency of the cause in filing of the appeal.

3. We look into the merits of the case for the reason, as the law has developed in India on the subject of delay, Courts have taken the view that if the cause projected is a meritorious cause the Courts should be extremely liberal in condoning the delays in preferring the appeals, for the reason rules of procedure are treated as subservient to substantive rules of law.

4. The respondent was the writ petitioner. The admitted facts were that being registered under the 6th Self Financing Scheme of DDA introduced in

the year 1991, on April 06, 1991, DDA informed the respondent that he had been declared successful for allotment of a flat in Block 8, Category II, Jasola, New Delhi on the ground floor at an estimated cost of ₹6,30,700/-.

5. Since the flats had to be made from out of the funds of the registrants because the scheme was a Self Financing Scheme, the respondent was informed that 4 instalments in sum of ₹1,57,675/-, ₹1,26,140/-, ₹1,57,675/- & ₹1,26,140/- would have to be paid on January 31, 1992, July 31, 1992, January 31, 1994 and July 31, 1994. It was indicated that the price was tentative and that the final price payable would be indicated and would have to be paid when a specific flat would be allotted. It was indicated that thereafter possession of the flat would be handed over. This was to be the last payment.

6. Albeit belatedly, the respondent paid the 4 instalments.

7. On August 01, 2000, DDA raised the final demand of further sum of ₹6,48,110/-. The respondent claimed that he had not received the final demand cum allotment letter. DDA insisted that it had sent one. Thus the respondent proceeded to the Court since DDA refused to take the balance money from him and restored the allotment which DDA had cancelled since the respondent did not tender the payment as demanded within the time indicated in the letter dated August 01, 2000.

8. It needs to be noted that vide letter dated August 01, 2000, Flat No.10-D on the first floor, Sidhartha Extension, Residential SFS Scheme was allotted to the respondent.

9. Noting that the record produced by DDA did not show dispatch of the demand cum allotment letter to the respondent and that the respondent had filed the writ petition in the year 2007, as also the fact that there were

numerous instances where allotments made in the year 2000 were restored by DDA as late as in the year 2005, the learned Single Judge proceeded to consider whether any flat under the 6th Self Financing Scheme was available; for the reason the flat allotted to the respondent appeared to have been allotted to somebody else in the interregnum.

10. On being informed by DDA that two flats, both in Sarita Vihar, constructed under the 6th Self Financing Scheme were available, the learned Single Judge has disposed of the writ petition filed by the respondent directing that Flat No.E-115 on the second floor, Sarita Vihar would be allotted to the respondent for which Demand-cum-Allotment letter would be issued and the cost of the flat would be determined in terms of the earlier Demand-cum-Allotment letter dated August 01, 2000. For belated payment, the respondent has been directed to pay interest to the DDA along with restoration charges. Rate at which interest has to be paid has not been indicated in the impugned order but we would understand it to mean the rate which DDA charges for belated payment.

11. Prima facie the view taken by the learned Single Judge is equitable, for the reason DDA spent not a penny from its pocket to construct the flats under the 6th Self Financing Scheme. It has to be kept in mind that the eligible registrants paid the instalments to DDA for construction of the flats. Another fact of equity in favour of the respondent would be that the 6th Self Financing Scheme introduced in the year 1991 resulted in a tentative allotment being made to the respondent in the year 1991 itself. Four instalments were to be paid, two in the year 1992 and two in the year 1994. DDA took the money from the registrants in the year 1992 and 1994 but did not complete the construction for another six years, evidenced by the fact

that the final allotment was made on August 01, 2000, when the flats were ready. In the interregnum there was an increase in the pre-determined rate of the land. Land which was acquired by DDA, on which construction commenced in the year 1992, was charged for by DDA as per the pre-determined rate of the year 2000. A flat which was indicated to be constructed for ₹6,30,700/- was ultimately allotted at a price of over ₹12 lakhs.

12. We have noted the facts pertaining to the merits of the case to determine the yardstick which we need to apply while condoning the delay. The yardstick has to be strict.

13. Looking at the cause projected by DDA for delay to be condoned we are not satisfied that the cause is a sufficient cause.

14. The application is dismissed.

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Since delay in filing the appeal has not been condoned, LPA 822/2012 is dismissed as not maintainable.

CM 21045/2012 (stay)

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 30, 2015
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