

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

+ **RSA No.325/2014**

Decided on : 2nd February,2015

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr.Arun Birbal, Adv.

versus

M/S SATISH STEEL TRADERS AND ORS. Respondent

Through: Mr.R.K.Jain and Mr.Rajesh Garg,
Advs.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellant against the order dated 30.05.2013. As a matter of fact, the appellant had earlier filed a civil revision petition against rejection of an application filed by the appellant seeking condonation of delay of 310 days by the learned ADJ in RCA No.59/2013.

2. My learned predecessor vide order dated 25.09.2014 treated the order dated 30.05.2013 rejecting the application filed by the appellant seeking condonation of delay of 310 days in filing the RCA

No.59/2013 as an appealable order in view of a Division Bench Judgment of the Supreme Court in Shyam Sunder Sarma v. Pannalal Jaiswal & Ors.; AIR 2005 SC 226. This is how the Civil Revision Petition has been treated as a regular second appeal.

3. The grievance of the appellant in the second appeal is that the learned first appellate court, without going into the merits of the case, has fallen into perversity in rejecting the application of the appellant seeking condonation of delay of 310 days in filing RCA No.59/2013 without considering the fact that the appellant is a public body and there are certain inbuilt procedural delays which have occurred on account of the lax attitude of the various officials of the appellant which cannot be treated as negligence on the part of the officials of the appellant so as to warrant the dismissal of the application seeking condonation of delay of 310 days in filing the RCA No.59/2013. Accordingly, it has been prayed that the said delay may be condoned and the matter be remanded back to the first appellate court for the purpose of deciding the appeal on merit.

4. Both the learned counsel for the parties in support of their contention have relied upon the judgments of the Apex Court as well

as of this court in order to support their submissions.

5. I have carefully considered the submissions made by the respective sides and have also gone through the orders passed by the trial court as well as the first appellate court vide orders dated 05.05.2012 and 30.05.2013 respectively.

6. Before dealing with the issue raised in the present appeal, it may be pertinent to give brief facts of the case.

7. The respondent herein had filed a suit for permanent and mandatory injunction. The injunction prayed for was that a mandate be issued in favour of the respondent/plaintiff and against the appellant/defendant to execute all the necessary documents which are required for conversion of the leasehold rights in property bearing No.X-20, Naraina, Delhi into freehold as they were purchasers of the suit property.

8. The said case was set up by the respondent/plaintiff on the basis of the fact that in the year 1977, Loha Mandi was shifted from Motia Khan to Naraina. On 26.07.1975, one Sh.L.N.Saraf was allotted the aforesaid warehousing plot bearing No.X-20 measuring 300 square yards in Naraina and the possession of which was handed over to him

on 29.07.1975 by the Assistant Engineer of the DDA subject to the condition that he shall hand over the possession of the land in his occupation at Motia Khan to the DDA.

9. It was alleged by the DDA that though Mr.L.N.Saraf had taken the possession of the land at Naraina, however, he did not hand over the possession of the land at Motia Khan to the DDA.

10. On 04.02.1976, a letter was sent by the appellant/DDA to Sh.L.N.Saraf for production of a certificate showing the proof of handing over of the site at Motia Khan along with updated damages to the DDA. However, this was not responded to by Sh.L.N.Saraf and on the contrary on 27.10.1977, he sold the property at Naraina by executing an agreement of sell in favour of the respondent/plaintiff for a sum of Rs.2 lakhs who subsequently filed the suit in question for permanent and mandatory injunction against the appellant.

11. The matter was contested by the present appellant by filing the written statement. Thereafter a application under Order 12 Rule 6 CPC was filed, reply was called and the court also recorded the statement of Sh.P.S.Joshi, Deputy Director Industrial, DDA. He had made a statement that the DDA has no objection in execution of

conveyance deed subject to clearance of damages prior to 1975 along with interest and the usual terms and conditions are fulfilled by the respondent/plaintiff as per the DDA Policy. Treating this as an admission under Order 12 Rule 6 CPC, the learned Trial Court vide order dated 05.05.2012 decreed the suit of the respondent/plaintiff and directed the appellant/defendant to execute the conveyance deed with regard to suit property i.e. X-20, WHS, Loha Mandi, Naraina, Delhi in favour of the respondent/plaintiff without framing any issues or without deciding the question as to whether other conditions were fulfilled or not.

12. It may be pertinent to mention here that the present appellant/defendant had taken a specific plea that the possession of suit property was handed over to Sh.L.N.Saraf subject to the condition that he shall produce a certificate showing that he had handed over the possession of his erstwhile plot of land at Motia Khan to the DDA. This plea was not dealt with by the learned trial court at all.

13. It may be pertinent to mention that curiously the respondent herein had not impleaded Mr.L.N.Saraf as a party in the suit although

Mr.L.N.Saraf was not only a necessary but also a proper party to be impleaded in the suit. Thus in a shoddy manner, the learned trial court without realizing the implications of the matter, passed a judgment and decree in favour of the respondent/plaintiff and against the appellant/DDA commanding them to execute the conveyance deed with regard to the suit property subject to the respondent/plaintiff furnishing the indemnity bond before the DDA and complying with the terms and conditions of the appellant/DDA's policy.

14. The appellant feeling aggrieved preferred first appeal after a delay of 310 days. However, they filed an application seeking condonation of delay. The reasons given by the appellant were that the judgment was passed on 05.05.2012 and the papers were sent to the panel advocate who applied for the certified copy of the said order on 23.08.2012. The certified copy of the judgment and decree along with case file was then forwarded by panel advocate to the DDA. In the meantime, the dealing assistant who was in charge of the file, retired on 30.09.2012 without intimating his successor about the case file. The file was located on 01.01.2013. It was processed for the

purpose of obtaining legal opinion as to whether an appeal is to be filed in the matter or not. The file was sent to the Chief Legal Advisor, DDA on 31.01.2013 who noted down his advice on 05.02.2013. Thereafter the file was again sent to the Chief Legal Advisor for entrustment of the matter to a counsel. The case was entrusted to the counsel on 01.03.2013 and communicated to the counsel on the same date. However, due to strike call given by the Bar Association at Dwarka Courts, the counsel could not take immediate steps for filing the appeal. Eventually, the file was prepared and sent for signatures and thereafter the application has been filed on 10.04.2013. This entire process has resulted in a delay of 310 days which according to the appellant constitutes sufficient cause which was beyond their control and accordingly it was prayed that the said delay be condoned. It had also been stated in the application that the delay caused was inadvertent and there was no negligence, inaction or lack of bona fide on the part of the appellant in preferring the appeal and, therefore, the same may be condoned.

15. The respondent herein contested this plea of the appellant for condonation of delay.

16. The learned first appellate court took a very pedantic view of the matter and rejected the application seeking condonation of delay observing that there are no two sets of law of limitation applicable to private citizens and the government bodies without realizing the fact that there had been inherent defect in the case of the respondent/plaintiff inasmuch as the suit of the respondent was allowed by the trial court summarily without conducting trial and, therefore, the first appellate court ought to have set aside that decision which it failed to do. It is well settled that the length of delay is not material in all cases unless and until it is inordinate, what is material is the bona fide of a party in filing the appeal. Further, while seeking the bona fides of a party, the court must also see the merits of the appeal. Prima facie, more so, where a judgment and decree is passed against a government body where the possibility of mix up of the staff cannot be completely ruled out. Thus, the very fact that the judgment of the first appellate court is suffering from perversity is itself a substantial question of law.

17. The submission made by the learned counsel for the respondent that there was gross negligence on the part of the appellant in filing a

civil revision petition against the impugned order although the second appeal was permissible does not persuade the court to accept the same.

18. From the submissions made by the learned counsel for the respondent, all that this court gathers is that without going into the merits of the case and see as to whether the respondent ought to have got the relief of mandatory injunction, the respondent wants to have a cake walk only on technicalities when there is an inherent defect in the case of the respondent inasmuch as not only he had not chosen to make Mr.L.N.Saraf as a party to the suit, but also the learned trial court had fallen into an error by passing judgment only on the basis of admission by simply recording the statement of the Deputy Director (Industrial) of the appellant. The aforesaid statement of the Deputy Director (Industrial) at best can be treated to be a statement recorded under Order 10 of CPC. One fact which has been ignored by the learned trial court is that no doubt Mr.P.S.Joshi, the Deputy Director (Industrial), has stated that the DDA has no objection execution of the conveyance deed in favour of the respondent/plaintiff, but it has to be subject to satisfaction of the usual terms and conditions of the DDA's

police and what those conditions were has neither been specified by him nor the court has taken into consideration the same or tried to find out what those conditions were when the appellant had taken a specific defence that these conditions were that an alternative allotment was made to Sh.L.N.Saraf subject to his returning the original land occupied by him at Motia Khan. A person cannot be permitted to take advantage of an alternative allotment under a scheme and yet retain the original land. This will be a travesty of truth. Therefore, on the face it, these facts clearly show that the appellant had a prima facie good case and while seeking condonation of delay one of the prime considerations is that what are the merits of the matter which is sought to be agitated or raised by a party who is seeking condonation of delay. Therefore, the first parameter in my view was fully satisfied by the appellant. With regard to the condonation of delay, the case law is replete which broadly lays down the principles that the length of delay is not important, but what is important are the bona fides of a party.

19. The court has also approved the factum that although there are no two separate laws of limitation, one applicable to the private

citizens and other to the government bodies, but on account of the impersonal nature of the functioning of the Government, certain amount of margin has to be given to the Government bodies for the purpose of processing all the files.

20. The learned counsel for the respondent has also not disputed that these propositions have been laid down by the courts day in and day out. Thus, there being unanimity on the principles of seeking condonation of delay, the court has to see following aspects : 1) bona fides of a party in prosecuting the matter, 2) the length of delay and efforts made by a party 3) some amount of margin to be given to a of a government body in processing the papers. 4) The possibility of the officials of an impersonal body like DDA, which is notorious for its functioning to help the other side. All these factors, if taken into consideration in totality, it cannot be said that the explanation which has been given by the appellant does not constitute sufficient cause.

21. I, therefore, feel that the first appellate court ought to have condoned the delay as in my considered opinion there was reasonable sufficient cause shown by the appellant by giving the various dates and the explanations and the first appellate court ought to have

decided the matter on merit. Since this has not been done, therefore, the judgment of the first appellate court deserves to be set aside and in normal circumstances, the matter ought to have been remanded back to the trial court, however, in the peculiar facts of the case, I feel that this court would be well within its powers to exercise the power of superintendence under Article 227 of the Constitution of India and set aside the order dated 05.05.2012 passed by the trial court also inasmuch as the same is also suffering from perversity on account of the fact that no judgment and decree could have been passed by the learned Civil Judge, as has been done in the present case, by simply recording the statement of the Deputy Director of the appellant as he had specifically stated that they had no objection to the execution of the conveyance deed in favour of the respondent/plaintiff. However, the same could not have been done unless and until all the formalities had been completed and especially when the appellant had taken a specific plea that the respondent had not handed over possession of the land in lieu of which the plot was allotted to Sh.L.N.Saraf. Therefore, the onus was on Sh.L.N.Saraf or the plaintiff to show that the land at Motia Khan in lieu of which he got the land at Naraina had

been duly handed over to the DDA, which has not been discharged.

22. For the reasons stated above, the appeal is allowed and the judgment of the first appellate court dated 30.05.2013 as well of the trial court dated 05.05.2012 are set aside and the matter is remanded back to the trial court to be decided afresh after framing of issues and permitting the parties to adduce their respective evidence. Let the parties appear before the court on 10.03.2015.

V.K. SHALI, J

FEBRUARY 02, 2015/dm