

*

HIGH COURT OF DELHI AT NEW DELHI

+

R.S.A. No.205/2011

Pronounced on: 3rd May, 2016

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Rajiv Bansal, Advocate with
Mr. Siddhant Gupta &
Ms. Ritu Gautam, Advocate

versus

RAMESH CHAND & ORS Respondents

Through: Mr. R. Sudhinder, Advocate with
Mr. R. Gopalakrishnan, Advocate for
R-1, 4, 5 (a), (c), (d).

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant against the judgment dated 07.07.2011 passed by Mr. S.S. Malhotra, Additional District Judge, Karkardooma Courts, Delhi by virtue of which the application under Section 5 of the Limitation Act seeking condonation of six months delay in filing the appeal has been dismissed.

2. I have heard Mr. Rajiv Bansal, the learned counsel for the appellant and Mr. R. Sudhinder, Advocate on behalf of the respondent.
3. Before dealing with the respective submissions made by the learned counsel for the parties, it would be pertinent here to give brief background of the case.
4. The respondent/plaintiff filed a suit for permanent injunction claiming himself to be in possession of a land bearing Khasra No.367 min., measuring 3 bighas 4 biswas, situated in the revenue estate of village Kondli, illaqa Shahdara, Tehsil Preet Vihar, Delhi. It was alleged by the respondent/plaintiff that the appellant/defendant DDA has no right, title or interest in respect of the aforesaid land as it has not been acquired for the planned development of Delhi. It was alleged that no show cause notice to the respondent/plaintiff was issued by the appellant/defendant and its officials and they were trying to illegally take the possession of the land in question. It was alleged that on 09.07.1999 at about 11:00 a.m. some officials of the appellant/defendant had visited the site to dispossess the respondent/plaintiff, which gave rise to the cause of action to file a suit for injunction and accordingly the

injunction was prayed for. Along with the main suit an application seeking ad interim relief was also prayed for.

5. The appellant/defendant filed its written statement and contested the matter. The stand of the appellant/defendant was that the suit land has been acquired by the DDA through different awards passed under Land Acquisition Act and Respondent/ plaintiff were not in possession. The respondent/plaintiff filed an application under Order 6 Rule 17 read with Section 151 CPC seeking amendment of the suit so as to add the relief of declaration and possession also in respect of the suit land. The said prayer for amendment was allowed and the suit was converted from a simplicitor injunction suit to a suit for declaration, possession and mandatory injunction.
6. On the basis of the pleadings of the parties, following seven issues were framed:-

“(i) Whether the suit is not maintainable for want of statutory notice u/s. 53B of DD Act? OPD.

(ii) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.

(iii) Whether the plaintiffs have no right, title or interest over the suit land? OPD.

(iv) *Whether the plaintiff is entitled for the decree of possession as prayed for? OPP.*

(v) *Whether the plaintiff is entitled for the decree of declaration as prayed for? OPP.*

(vi) *Whether the plaintiff is entitled to decree of mandatory injunction, as prayed for? OPP.*

(vii) *Relief.”*

7. The respondent/plaintiff in support of his case examined five witnesses. On the other hand, the appellant/defendant examined one witness.
8. The learned trial Court after analysis of the evidence partly decreed the suit in favour of the respondent/plaintiff declaring the respondent/plaintiff to be the lawful owner of suit land. However, no order with regard to injunction or possession was passed or declaration was issued.
9. Feeling aggrieved, the appellant/defendant preferred an appeal against the judgment and decree dated 02.02.2010. Along with the appeal an application seeking condonation of delay of six months was also filed. It was stated in the application that the appellant/defendant being a government organization, the matter had to be examined in various departments and before filing an appeal, opinion from the Chief Legal Advisor (CLA) was obtained

and approval is sought for the purpose of filing an appeal. It was stated that there was no intentional or deliberate delay on the part of the appellant/defendant and it was on account of genuine and bona fide reasons of processing the file through different departments of the appellant that the delay had occurred. It was also stated that the appeal was filed after summer break when the Courts reopened. An Affidavit of S.N.Gupta, Land Management (I) in support of the application was also filed.

10. It may also be pertinent here to mention that it was stated that the appeal was filed after reopening of the Court in July.
11. The respondent/plaintiff contested the application seeking condonation of delay by alleging that the reasons which were given by the appellant/defendant in the application seeking condonation of delay did not constitute '*sufficient cause*' as details of processing the file were not given. It was also stated that the appellant in its Affidavit of seeking condonation of delay had made a false averments in as much as in the Affidavit it has been stated that the appeal has been filed after reopening of the Court in July while as the appeal has been filed in the month of September, 2010.

12. The learned first Appellate Court considered the submissions made by the respective sides and has taken a view that the appellant/defendant have made an incorrect statement by stating that the appeal had been filed immediately after reopening of the Court while as it was actually filed in the month of September, 2010. On merits also, he did not agreed that sufficient cause was shown by the appellant in proof of condonation of delay and according, the application itself was rejected.
13. The appellant/defendant feeling aggrieved by the aforesaid rejection of the appeal on technical ground of non condonation of delay have preferred the present second appeal.
14. Mr. Rajiv Bansal, the learned counsel for the appellant/defendant has vehemently contested the approach of the learned trial Court, the first Appellate Court by contending that the appellant/defendant never stated in the Affidavit that the appeal was filed immediately on the opening day after the summer break. It has been stated that the learned first Appellate Court has erroneously construed the statement of the appellant that it has been filed on the reopening of the Court as if the appeal was filed on the re-opening “day” while

as the appellant has purposely not used the word “*day*” after reopening and therefore there was absolutely misreading of this line of the Affidavit of the deponent Mr.S.N.Gupta, Land Manager (I) by the learned trial Court.

15. It has been contended that even on merits the appellant/defendant have a good case in as much as the learned trial Court has not considered the evidence and erroneously have issued a declaration in favour of the respondent/plaintiff. The land in question is acquired land and belongs to the DDA and the first appeal being the matter of right, the learned first Appellate Court ought to have considered the appeal on merits rather than ousting the appellant/defendant on a technicality.
16. The learned counsel for the respondent/plaintiff has vehemently contested the submission made by the learned counsel for the appellant/defendant. It has been contended that the learned first Appellate Court was right in its observation that the appellant tried to mislead the court by stating that the appeal has been filed after the vacations on reopening while as it was filed in the month of September, 2010. It has been further contended that the rejection

of the appeal on the ground of limitation does not raise any substantial question of law which is a pre-requisite before the second appeal is entertained by the Court.

17. I have carefully considered the submissions made by the counsel for the parties. I have also gone through the record.
18. The law regarding limitation has gone sea change from the first judgment laid down by the Apex Court in *Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd*, 1962 SCR (3) 762 case to till date.
19. *Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd* (supra) the interpretation of the words '*sufficient cause*' given by the Apex Court was that the appellant or the applicant, who seeks condonation of delay must not only show as to why he did not file the appeal or the application as the case may be on the last date of the limitation but also has to keep on explaining each day's delay in filing the same. This strict adherence of explaining each day's delay has been completely done away with the passage of time by the Apex Court. The broad parameters with regard to proof of '*sufficient cause*' seeking condonation of delay can be summed up

as the following points has have been enunciated in different judgments of the Apex Court in different words:-

- (i) While condoning the delay under Section 5 of the Limitation Act it is not the length of delay what is important but it is the bona fides of a party.
- (ii) That while explaining the delay, each day's delay is no more required to be explained by a party but what is to be explained is as to what is the reason in substance which caused the delay in filing the appeal.
- (iii) Though the law of limitation which is applicable to the government bodies is the same which is applicable to the private individuals. But still on account of impersonal body of the government some leeway has to be given to the government or government bodies in taking a decision.
- (iv) That while explaining the delay the broad reasons which has resulted in passing of the delay must be explained and the litigant should not be indolent and grossly negligent in prosecuting the remedy.

- (v) The Court must construe the provision of '*sufficient cause*' liberally and in a pragmatic manner rather than ousting a party on technicality.
- (vi) Last but not the least, it has been observed in number of cases that while condoning the delay the court must cursorily have a look at the merits of the matter also so as to see as to what is the worth of the case of the appellant/applicant.
20. Reliance in this regard can be placed on *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors*, ;(2013)12SCC649, *Basawaraj & Ors. vs The Special Land acquisition officers*; AIR 2014SC746, *Parimal vs Veena@ Bharti*; AIR 2011SC1150.
21. Coming back to the facts of the present case, the quantum of delay which has taken place in the instant case is not very large. The appeal from the order of the learned District Judge is to be filed in the High Court within ninety days while as the appeal has been filed after about 180 days and the reason which has been given by the appellant/DDA is that a decision had to be taken in the various departments of the DDA. The matter was to be examined in the

various departments of the DDA before a decision could be taken with regard to filing of the appeal which was ultimately taken by the Chief Legal Advisor in April, 2010 the moment the decision was taken, instructions were given to file the appeal. It has also been stated that the delay which had taken place was on account of the bona fide reasons and was not done with a deliberate intent. Accordingly, it has been prayed that the delay may be condoned.

22. The aforesaid facts clearly show that the delay which was involved in the instant matter was not so great that the Court ought to have rejected the plea of condonation of delay when an explanation was given. The court ought to have realized that the government is an impersonal body and there is not dearth of people in such governmental bodies who are out right to help the private litigants and for this purpose they process the files at a snail pace only with a view to ensure the merits of the matter are not dealt with. Such a practice deserves to be curbed and meted out with a heave hands. By not condoning the delay in such kind of cases we are only giving impetus to such officials that the delay will not be condoned and the order which has been obtained by the respondent/plaintiff

though it may not be sustainable on merits but because of the application seeking condonation of delay having been rejected the seal of the legality is put on the same. Because of these reasons, I feel the delay of six months in preferring the appeal in the instant case ought to have been condoned by the learned ADJ.

23. So far as the condonation of delay is concerned, the merits of the matter are also cursorily to be borne in mind. The first appellate Court ought to have taken note of the fact that the first appeal is a matter of right and therefore, there should have been at least first check with regard to merits of the matter in the instant case. By rejecting the application seeking condonation of delay, there is no occasion for the first appellate court to consider the merits of the main matter itself and literally the land in question which is being claimed by the appellant to the government land is permitted to become a private land by the respondent/plaintiff.

24. There is another aspect of the matter. This is that the respondent/plaintiff firstly filed a suit for injunction knowing and fully aware that in case a suit for injunction is filed no statutory notice is required to be served on a party. After having obtained an

injunction an application under Order 6 Rule 17 CPC is filed by the respondent/plaintiff wherein he claims the declaration as well as possession in respect of the suit land. No suit for declaration could be filed against the DDA unless and until a statutory notice under Section 53-B of the DDA Act is given. In the suit for injunction the respondent/plaintiff had specifically stated that he is in possession of the suit property. If that be so then what was the necessity for the respondent/plaintiff to have claimed possession. All these facts clearly show that the respondent/plaintiff wanted to circumvent the law and get a decree of ownership only on technicality.

25. The appellant/defendant had taken a specific objection that the land stands acquired and therefore, no right, title or interest vested in the respondent/plaintiff to either get injunction or to get a declaration. This had been brushed aside and not considered by the court and accordingly, the application seeking condonation of delay has been rejected.
26. Another important aspect of the matter is that the first appellate Court has got swayed by the words in the application seeking condonation of delay so as to observe as if the appellant/defendant

was misleading the court. It was observed by the Court that the appellant had tried to mislead as if the appeal was filed immediately on the reopening day.

27. I have considered this aspect of the matter also but I feel that there was no occasion much less the intention on the part of the appellant to mislead the Court. The appellant has nowhere in the Affidavit stated that the application seeking condonation of delay has been filed on reopening **“day”**. The word **“day”** has not being used in the Affidavit at all. No doubt the Affidavit in this regard is not happily worded but the intention of the appellant seems to be to apprise the Court that the appeal was filed after reopening of the Court rather than on the reopening day, which resulted in delay in filing the appeal itself.
28. The contention of the learned counsel for the respondent that this issue of rejection of the application seeking condonation of delay under Section 5 of the Limitation Act does not constitute a substantial question of law so as to warrant an interference by this Court does not, in my view carry any weight. The reason for this is an erroneous interpretation of Affidavit or a provision of law would

certainly be a substantial question of law which needs adjudication by the learned Judge.

29. For the reasons mentioned above, I am of the considered opinion that the Appellate Court erroneously rejected the contention on delay application. The very fact that there was an erroneous rejection of the application by the first appellate Court itself is a substantial question of law.
30. I, therefore, feel that the contention of the learned counsel for the respondent/plaintiff that there is no substantial question of law involved in the matter is without any merit.
31. For the reasons mentioned above, I feel that the first appellate Court ought to have condoned the delay as sufficient cause has been shown by the appellant/DDA and it ought to have dealt with the matter on merits.
32. Accordingly, the appeal of the appellant is accepted. Delay of six months in filing the appeal is condoned.
33. The appeal is allowed with the direction to the parties to appear before the learned District & Sessions Judge, East District, Karkardooma Courts, Delhi on 16.05.2016 who shall allocate the

appeal to the successor court or such other court as he deems fit
for the purpose of disposal of the appeal on merits.

V.K. SHALI, J.

MAY 03, 2016
vk

