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

+ LPA 457/2016 & CM No. 29608/2016

ASHOKA HOTEL

..... Appellant

Through: Mr.Ravi Sikri, Sr.Adv. with Ms.
Shantala Sankrit, Mr.Deepank Yadav and
Ms.Divyangana Singh, Advs.

Versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr.Sajnoy Ghose, Adv. for R-1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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05.12.2016

CM No. 29609/2016 (delay in filing the appeal)

1. This application has been filed for condonation of delay of 264 days in filing the appeal.
2. We have heard the learned counsel for both the parties and perused the counter filed by the respondent No.2 opposing the application.
3. The appeal is preferred on 01.06.2016 against the dismissal of W.P.(C) No.2800/2004 by order dated 12.08.2015. By the said order, the learned Single Judge upheld the award of the labour Court dated 16.05.2003 holding that the termination of the services of the workman/respondent No.2 herein was illegal being violative of Section 25F of the Industrial Disputes Act and that he shall be reinstated with full back wages and continuity of

service.

4. The only explanation that has been offered in the application for condonation of delay of 264 days in filing the appeal is that the appellant/writ petitioner came to know of the order in the writ petition dated 12.08.2015 only when the letter dated 23.02.2016 of the workman was received requesting for reinstatement in service. After the workman filed his counter disputing the plea that the appellant was not aware of the impugned order passed by the learned Single Judge, in the rejoinder filed on behalf of the appellant dated 25.10.2016, it is sought to be explained stating as under:-

“3. That it is the most respectful submission of the appellant – Ashok Hotel that it was not aware of the passing of the Impugned Order, and had not been informed about the same. It was on account of the said fact that the Appellant – Ashok Hotel could not promptly initiate appropriate action for challenging the Impugned Order dated 12.08.2015.

4. That it is the humble submission of the Appellant – Ashok Hotel that it was only upon receipt of the letter dated 23.02.2016 written by Respondent No.2 to the Appellant – Ashok Hotel, whereby he had requested reinstatement in service, that the administrative machinery of the Appellant – Ashok Hotel was set into motion.

It is most respectfully submitted that immediately thereafter, the Appellant – Ashok Hotel contacted the Counsel who had appeared on its behalf in the Writ Petition No.2800 of 2004, and discussed the consequences of the Impugned Order, as also the viability of a challenge to the same.

5. That it is humbly submitted that after detailed discussion with its Counsel, and obtaining the requisite approvals from the competent authority, the Appellant – Ashok Hotel instructed its Counsel who had appeared on its behalf in the Writ Petition No.2800 of 2004, to prepare an Appeal challenging the Impugned Order.

However, despite taking considerable time to prepare the Appeal, the said Counsel could not prepare the same on account of certain personal reasons.

6. That in such circumstances, the Appellant – Ashok Hotel was constrained to engage another Counsel for the purpose of filing the Instant Appeal. The Appellant – Ashok Hotel, being conscious of the fact that considerable time had elapsed since the passing of the Impugned Order, promptly handed over all the relevant records pertaining to the Instant Case its Present Counsel, along with the instructions to prepare and file the Instant Appeal on urgent basis.

7. That the Counsel for the Appellant – Ashok Hotel, thereafter prepared the Instant Appeal and forwarded the same to the Appellant – Ashok Hotel for approval and signatures

The Instant Appeal was examined at various levels within the Appellant – Ashok Hotel and after a few minor changes, the same was finalized and approved for filing.

8. That thereafter, the Final Copy of the Instant Petition was handed over to the Counsel for filing, and the same was filed immediately thereafter.

9. That it is the most respectful submission of the Appellant – Ashok Hotel, that on account of the lengthy process mentioned above, there is a delay of 264 days in

filing of the Instant Appeal, which is neither deliberate nor intentional. The delay can merely be attributed to the fact that the Appellant did not have timely knowledge of the passing of the Impugned Order as also the fact that earlier Counsel for the Appellant – Ashok Hotel could not prepare the Instant Appeal owing to certain personal difficulties. The delay is also attributable to the considerable time spent in tracing certain old documents, seeking information from various Departments and officers functioning within the Appellant – Ashok Hotel, and the long drawn process of decision making in the Appellant Organization.

10. That the Appellant has prima facie good case in its favour and against the Respondents. Further, it is in the interest of justice, equity and good conscience that the delay in filing of the Instant Appeal, be condoned as otherwise, irreparable loss and grave prejudice would be caused to the Appellant.”

5. As could be seen, even the explanation offered in the rejoinder dated 25.10.2016 is vague and lacks in material particulars. Having regard to the fact that the appellant is the management and it was the petitioner in the writ petition, we are unable to accept such a casual plea that it was not aware of the dismissal of the writ petition till the workman's representation for reinstatement was received. It is relevant to note that even after receiving the workman's representation on 27.02.2016, there was delay of more than 3 months in preferring the appeal for which no satisfactory explanation is forthcoming. In the totality of the facts and circumstances, the only conclusion that can be reached is that the delay was on account of gross negligence, deliberate inaction and callous indifference on the part of the appellant.

6. Hence we hold that no sufficient cause is made out to condone the inordinate delay of 264 days. Accordingly, the application is hereby dismissed.

LPA 457/2016

In view of the dismissal of the application for condonation of delay, the appeal also stands dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

DECEMBER 05, 2016

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