

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

MACMAMP 2899OF 2017 IN/AND MACMA NO.1571 OF 2017

ORDER:

This petition is filed under Section 151 CPC to condone the delay of 96 days in representing the appeal.

2. It is alleged in the affidavit filed in support of the petition that the appeal was presented on 13-03-2017 and the same was returned on 17-03-2017 with certain objections by the Registry and the entire returned bundle was taken by the clerk of the standing counsel and sent to appellant Corporation for complying with the objections. After receiving the file from the standing counsel, the same was misplaced in the corporation. Later it was traced out in the other Districts bundle, in the month of June, 2017 and immediately, the bundle was prepared with all relevant papers and sent to the standing counsel for representation of the appeal before the Court.

3. It appears from the affidavit that the appeal was presented in time, but the counsel has to comply with the objections raised by the Registry. Instead of complying with the objections, the bundle was handed over to the clerk of the Corporation, who in turn misplaced the bundle as stated in the affidavit by the Law Officer-II, TSRTC, Bus Bhavan, Hyderabad, who is unconcerned with the misplacing of the bundle in the corporation. Therefore, the said reason can never be construed as sufficient cause which prevented the petitioner from representing the appeal in time.

4. As seen from the allegations in the affidavit of the Law Officer, several members are negligent in handling the file and misplacing the same and traced later and such conduct in causing delay is described as 'RED TAPISM'. Similar question

came up before the apex Court in **OFFICE OF THE CHIEF POST MASTER GENERAL AND OTHERS V LIVING MEDIA INDIA LTD., AND ANOTHER** ¹. The apex court while deciding the identical application held that when there is a delay of four months in filing copy application without offering any explanation for delay, is not a ground to condone delay. The delay at every stage of official procedure already showing that persons concerned have not evinced diligence in matter though they had knowledge of limitation for filing the appeal. In the light of the judgment in **MANIBEN DEVRAJ SHAH V MUNICIPAL CORPORATION OF BRIHAN, MUMBAI** ², the apex court held that delay alleged to be caused because of misplacement of papers and transfer of concerned officers. Explanation given however silent as to when paper got misplaced and when they were traced. Why there was delay in applying for certified copy of judgment and how transfer of concerned officer delayed filing of appeal when appellant had battery of lawyers. Cause shown for delay not sufficient cause. Delay is not liable to be condoned.

5. In the present case, the principle laid down in the above judgment is applicable to the present facts of the case for the reason that the clerk of the corporation misplaced the file and it is silent as to when the file was taken by the clerk or entrusted the returned bundle to the clerk of the corporation and when it was traced. In the absence of any details regarding handing over of the bundle to the clerk of the corporation and misplacing the same by the clerk of the corporation etc., delay cannot be condoned, as a matter of course. In **PUNDLIK JALAM PATIL (D) BY LRS V EXE. ENG. JALGAON MEDIUM PROJECT AND ANOTHER** ³, and in **NAV RATTANMAL AND OTHERS V STATE OF RAJASTHAN** ⁴, the apex court high lighted the

¹ AIR 2012 SC 1506

² AIR 2012 SC 1629

³ 2008 (6) ALT PAGE 38 (SC)

⁴ AIR 1961 SC 1704

conduct of the public authority in causing delay. Because of official movement of files by the officers, the parties cannot be put to inconvenience. The persons who are not diligent in filing the appeal within time, are not entitled to claim condonation of delay. The Court cannot condone the delay on equitable ground. Therefore, the ground urged in the present petition is that the clerk misplaced the bundle and later traced and in such a case, delay in representation cannot be condoned. If such acts are continued, the Courts will become privies to such mal functioning of Government departments and it amounts to encouraging such officers, who were slept over the matters for a considerable period. Therefore, I find no ground to condone the delay of 96 days in representing the appeal.

6. Accordingly, this petition is dismissed and consequently MACMA is rejected.

DATED:17-07-2017.
Hsd

M.SATYANARAYANA MURTHY, J