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

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Date of decision: 07.03.2017

+ C.R.P. 48/2017 and CM No. 7398/2017 (stay)

NEW DELHI MUNICIPAL COUNCIL Petitioner
Through Mr.Kshitiz Karjee and Mr.Aditya
Vikram Singh, Advocates.

versus

SARVESH CHAND GUPTA AND ANR Respondents
Through Mr.P.K.Rawal and Mr. Tarun
Agarwal, Advocates for R-1.
Mr.Sunil Mittal, Sr.Advocate with
Mr.Dhruv Grover, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present petition is filed under Section 115 CPC to impugn the order dated 26.11.2016 by which an application filed by the petitioner/NDMC under Section 5 of the Limitation Act seeking condonation of Delhi in filing of the amended written statement after the amendment to the written statement was allowed was dismissed.
2. Respondent No.1/plaintiff has filed a suit for permanent/mandatory injunction pertaining to a property located at Bengali Market, New Delhi. Respondent No.1 seeks a decree of permanent injunction to restrain the petitioner/NDMC from in any manner interfering with the proprietary rights of the plaintiff/respondent No.1 in respect of the suit property and also from

implementing/enforcing the circular dated 31.05.07 which is said to be unwarranted and void ab initio. A decree of mandatory injunction is also sought against the petitioner directing the petitioner to communicate to the plaintiff/respondent No.1 the charges payable towards regularization of the breaches on account of unauthorised construction made by the various tenants/occupants as also on account of the misuse charges leviable for use of the property contrary to the terms of the perpetual lease deed within a reasonable period to enable the plaintiff /respondent No.1 to comply with the demand.

3. NDMC filed its written statement. Subsequently, an application under Order 6 Rule 17 CPC was filed for amendment of the written statement. On 11.04.2016, the trial court noted that the matter is at an initial stage and that though the suit is filed in 2007 but issues are yet to be framed. It also noted that the proposed amendment only seeks to elaborate and explain the various objections taken by NDMC as well as legal pleas to the counter the claim of the plaintiff. Noting that the proposed amendment only seeks to add certain legal and factual objections taken on behalf of the petitioner, the application was allowed. At this stage, learned counsel for respondent No.1 informs that a petition challenging the said order dated 11.04.2016 has been filed though it has not been listed.

4. The trial court as per order dated 11.04.2016 imposed costs of Rs.10,000/- and adjourned the matter to 11.05.2016 for filing of the amended written statement. As there was further delay in filing of the written statement, on 23.08.2016 the trial imposed an additional costs of Rs.5,000/- and gave a last opportunity to the petitioner to file the amended written statement. This amended written statement was finally filed on

21.09.2016 and was taken on record along with the application seeking condonation of delay in filing of the amended written statement but costs had not been paid. Hence what follows is that the written statement which was to be filed on 11.05.2016 has been filed on 21.09.2016 i.e. after a delay of 129 days. No costs have been paid.

5. As per the application filed by the petitioner under Section 5 of the Limitation Act it was stated that there was change in the counsel who was handling the matter. The previous counsel Sh. Rajinder Arya was replaced on account of a change in the panel of counsel and on account of the same there has been a delay in filing of the amended written statement. The trial court by the impugned order concluded that there are no cogent reasons given to explain the delay and concluded that there is patent delay in filing of the amended written statement. The application was dismissed.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner submits that the cost of Rs.15,000/- would be paid within two weeks from today in case the amended written statement is allowed to be placed on record. He reiterates the contents of the application.

8. Learned counsel appearing for respondent No. 1 has vehemently opposed the present petition arguing that on account of the conduct of the petitioner, the respondent suffered immensely and the suit is pending since 2007 and is needlessly being delayed. He submits that merely because the petitioner is a government organisation would not give it any greater justification to act without bona fide and in a negligent manner. He seeks to rely upon various judgments to support his contention.

9. The settled legal position is that the term sufficient cause as defined in

Section 5 of the Limitation Act would normally be construed in a reasonably liberal manner.

10. The Supreme Court in *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors. (2013) 12 SCC 649*, held as follows:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

11. The state or a public body will be given acceptable latitude. In the present case, the ground given is change in the panel of counsel of NDMC which is a statutory organisation. These changes do occasionally happen in government bodies. Accordingly, in my opinion, the petitioner has shown sufficient causes for condonation of the delay of 129 days.

12. Accordingly, in my opinion, the impugned order suffers from material illegality and irregularity. The impugned order is quashed and the amended

written statement is taken on record subject to payment of costs of Rs.15,000/- to be made within two weeks from the date of receipt of a copy of this order. It is made clear that in case the costs are not made within two weeks, the right of the petitioner to have the amended written statement placed on record shall be closed.

13. In view of the above, the present petition stands disposed of.

14. All pending applications also stand disposed of.

15. Dasti.

JAYANT NATH, J

MARCH 07, 2017

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