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

+ **RSA 387/2015**

Date of Decision: 02.03.2016

DELHI DEVELOPMENT AUTHORITY Appellant
Through Mr.Rajiv Bansal, Mr.Kush
Sharma & Mr.Siddhant Gupta,
Advvs.

versus

KHEM CHAND & ORS Respondents
Through Mr.Madan Lal Sharma &
Mr.B.D. Kaushik, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln. 26671/2015

1. This is an application for condonation of delay of 100 days in filing the appeal.
2. The appellant/applicant, while asking for the delay of 100 days in filing the second appeal to be condoned, submitted that the files pertaining to the said matter was received in the office of the counsel of DDA on 26.05.2015 with the authorisation to draft the second appeal against the judgment and order dated 26.03.2015 passed by the First Appellate Court.
3. It is submitted that counsel was not attending his office because of some personal/family obligations and he was not informed by the

clerk about receipt of the file of the DDA. The files were kept in the file cabinet and later were wrongly tied with W.P.(C) No.8252/2014 (Hardeep Kaur vs. Union of India). The aforesaid case was listed for hearing on 21.08.2015 when it was discerned that the file of the present case was also wrongly tied with W.P.(C) 8252/2014.

4. Learned counsel for the appellant/applicant submits that immediately thereafter, certified copy of the order dated 26.03.2015 (impugned order) was applied for on 22.08.2015. In the mean time, a draft was made ready and was sent to the office of DDA on 24.09.2015 for signature. On receipt of a certified copy of the impugned judgment of the First Appellate Court dated 26.03.2015, second appeal was filed immediately.

5. It is submitted that the delay of 100 days was not on account of any willful latches on the part of the appellant and such delay was wholly bonafide and unintentional.

6. While opposing the application for condonation of delay, learned counsel for the respondents, submitted that the delay was caused only by the negligent conduct of the counsel in dealing with the matter which could have had important bearing on the fate of the respondents. It was further submitted that the name and particulars of the clerk who played truant has also not been stated and thus the reasons assigned for the delay is not only insufficient but not fit to be accepted as good grounds for condonation of delay. It is further submitted that there is no explanation as to what transpired between 30.09.2015 and 06.10.2015, thus making the application highly deficient for this Court to entertain the same.

7. In support of his contentions, learned counsel for the respondents has pointed out that Hon'ble Supreme Court in ***Brijesh Kumar & Ors. Vs. State of Haryana & Ors., III (2014) SLT 316***, dealt with the law with respect to the limitation, delay and laches as well as condonation of such delay.

8. The Hon'ble Supreme Court has observed that law of limitation is based on the legal maxim "*Interest Reipublicae Ut Sit Finis Litium*". (It is for the general rule of the welfare that a period be put to litigation). The rules of limitation are not meant to destroy the rights of the parties; rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. Lack of bonafides, if imputable to a party seeking condonation of delay, is a significant and relevant fact and the concept of liberal approach while dealing with the law of limitation has to be perceived along with concept of reasonableness.

9. The parties cannot be allowed to have an unbridled and unfettered free play in matters of timing of approaching the Court. The Courts, the Supreme Court asserted, must keep in mind while dealing with the limitation petition that there is a distinction between the delay for a plausible reason and delay because of inaction or negligence which deprives a party of the protection of Section 5 of the Limitation Act, 1963.

10. Learned counsel for the respondents has submitted that it is no longer *res integra*, as a proposition of law, that sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay.

11. In **Ramlal vs. Rewa Coalfields Ltd., AIR 1962 SC 361**, the Supreme Court, while interpreting Section 5 of the Limitation Act, laid down the following proposition:

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree- holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

12. In **Collector, Land Acquisition, Anantnag v. Mst. Katiji, (1987) SCC 107**, the Supreme Court made a significant departure from the earlier judgments and observed:

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have

percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
- 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the

“State” is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note- making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”

13. ***In N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123,*** the Supreme Court expanded the scope and ambit of law of limitation and elucidated as follows:

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to

consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the

part of the applicant, the court shall compensate the opposite party for his loss.

14. ***In P.K. Ramachandran v. State of Kerala, (1997) 7 SCC 556,*** the Supreme Court while reversing the order passed by High Court which had condoned 565 days delay in filing an appeal by the State against the decree of the Sub- Court in an arbitration application, observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. ***In Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106,*** the Court observed that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises.

15. ***In State of Nagaland v. Lipok AO, (AIR 2005 SC 2191: 2005 AIR SCW 1748) (supra),*** the Supreme Court referred to several precedents on the subject and observed that the proof of sufficient cause is a condition precedent for exercise of discretion vested in the Court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Court also took cognizance of the usual bureaucratic delays which takes place in the functioning of the State and its agencies/instrumentalities and observed:

“Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal.”

16. Learned counsel for the respondents submitted that from a conspectus of the decisions referred to, the approach which the Court is required to observe is a liberal approach but has to be cognizant of the fact that certain rights accrue to the successful litigants on the basis of the judgment under challenge and the fruits of litigation which more often than not, consumes a long time may not be frustrated.

17. If the explanation given by the applicant is not genuine or appears to be concocted or that there has been uncondonable negligence, the Courts ought not to exercise the discretion in favour of condoning the delay.

18. In ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629***, the Supreme Court has stated:

“In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed

by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.”

19. Learned counsel for the appellant, on the other hand, relies upon the same set of judgments and some others, especially the judgment referred in ***State of Nagaland vs. Lipok Ao And Ors., (supra)*** wherein the Supreme Court has observed at paras 15 and 16 as hereunder:

“15. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice- oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed

prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

16. The above position was highlighted in State of Haryana v. Chandra Mani and Ors. (1996 (3) SCC 132); and Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma (1996 (10) SCC 634). It was noted that adoption of strict standard of proof sometimes fail to protract public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.

20. In the background of the legal principles and the facts stated in the petition, there does not appear to be any uncondonable negligence.

21. It is true that whenever there is a delay, there is some sort of negligence.

22. In the present case, good faith and bonafides do not appear to be wanting.

23. Thus, the delay of 100 days in filing the second appeal is condoned and the application is allowed and disposed of accordingly.

RSA 387/2015

Relist on 08.07.2016.

ASHUTOSH KUMAR, J

MARCH 02, 2016

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