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

Date of decision: 18th May, 2018

+ **RFA 75/2017 & CM APPL. 2376/2017**

STATE OF NCT OF DELHI

..... Appellant

Through: Ms.Urvi Mohan, Advocate with
Mr.Sanjay Ghose, ASC, GNCTD.

versus

PREM CHAND SHARMA & ORS

..... Respondents

Through: Mr. S.P. Singh and Mr. Y.R. Sharma,
Advocates for R-1.
Ms. Anju Gupta and Mr. Roshan Lal
Goel, Advocates for UOI/R-2.
(M-9654169406)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

**CM APPL. 2377/2017 (for condonation of delay of 1765 days in filing
the appeal)**

1. The present appeal has been filed against the impugned judgment/order dated 20th December, 2011 by which the Trial Court passed a decree of damages of Rs.3,00,000/- along with interest at 12% per annum. The appeal is accompanied by an application for condonation of delay. The delay of which condonation is prayed for, is to the tune of 1765 days.

2. The case of the Appellant for condonation of delay is that though the judgment and decree was passed on 20th December, 2011, the Appellant department was not aware of the same. The application pleads that for the

first time, the DCP in the Police Headquarters came to know of the impugned judgement only in 2014 when the Respondent No. 1 filed an execution and notice of the same was issued to the Appellant.

3. The further reasons for the delay are captured in paragraphs 4 to 8 and the same are extracted herein below:

- “4. That vide the impugned judgment dated 20.12.2011, the suit has been decreed in favour of the Plaintiff, That there has been a delay in preferring the appeal since even though the judgment had been passed in 2011, the copy of the same was not received at the local police station handling the matter and on account of which the appeal could not be preferred within the period of limitation.*
- 5. That only after the Respondent No. 1/Plaintiff having preferred the execution petition in 2014, after receipt of notice in the Execution Petition to the Appellant, the same brought to the notice of the Police Headquarter and was received by the DCP on 20.03.2015. The matter that was fixed for hearing on 10.04.2015 was attended to by the Appellant and in the meanwhile the government counsel was appointed.*
- 6. That accordingly an opinion was sought of the Government counsel as to whether the case was fit to be appealed. That on obtaining the opinion, the Department accordingly requested for the appointment of the Additional Standing Counsel in August 2016.*
- 7. Meanwhile in December, at the local police station, the Pairvi Officer was transferred and accordingly Mr. KP Singh was appointed to handle the case. That certified copy of the court proceedings were applied on 21.11.2016 and made available to the counsel in third week of December 2016.*
- 8. The accompanying appeal was accordingly prepared and filed after the vacation of this Hon'ble Court from 25.12.2016 to 01.01.2017.”*

4. A perusal of the reasons given seeking condonation of delay shows that there can be no justification for the long delay that has occurred in this matter in filing the appeal. Admittedly, the notice in the execution petition was served in 2014 and the Applicant appeared before the Executing Court on 10th April, 2015.

5. Despite this, the appeal was not filed in time and the reasons stated for the same is that the *Pairvi* officer was transferred and Appellant requested an opinion from the additional standing counsel in August, 2016. There is no dispute that the appeal was filed on 17th January, 2017 almost three years even after receiving notice in the execution petition. The counsel for the Petitioner has strenuously urged that the procedure within the Government Department is time consuming and they were processing the file to the best possible extent. As already in held in ***Postmaster General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563***, the Supreme Court has made it clear that even in the case of Government Departments the mere movement of files or seeking of opinion from the legal counsel cannot be a ground for condoning long delays. The relevant extract from the said judgment is set out herein below:

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to RFA 962/2016 Page 2 of 3 advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The

law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all government bodies, their agencies and instrumentalities and unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of the few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

6. Learned counsel has strenuously argued by relying upon a copy of the note sheet handed over today which shows the movement of the file. A perusal of the said note sheet shows that it is only from June 2016, the processing has started for appointment of a counsel. There is no justification given prior to the said date as to why from 2011 to 2016 no steps were taken. Even as per the Appellant's own application, knowledge of this order acquired in 2014 and there is nothing produced so as to justify the delay even during that period. Ld. counsel for the Appellant submits that the records and the certified copies of the file was obtained only in 21st

November, 2016. There can be no justification for the delay of two and a half years in even obtaining papers from the Court, after acquiring knowledge of the order. Admittedly, the Appellant attended the hearing on 10th April, 2015 but did not proceed with alacrity. The impugned judgment is of 21st December, 2011 and the filing of the appeal is on 17th January, 2017. Clearly there has been delay of more than five years in filing of this appeal. There is no justification for condoning the long delay of 1765 days in the matter.

7. The application for condonation of delay is dismissed.

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8. Since the delay is not condoned, the appeal is also dismissed.

CM APPL. 14674/2018 (under Section 151 CPC for release of decretal amount along with interest)

9. As per order dated 19th January, 2017, the Appellant had deposited the decretal amount. The Registry's report shows that a total sum of Rs. 7,62,097/- has been deposited and is lying in a fixed deposit in this Court. The same may be released to the Respondent No. 1 within four weeks.

10. The date fixed before Joint Registrar is cancelled.

**PRATHIBA M. SINGH
JUDGE**

MAY 18, 2018
Rekha/ds