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

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Date of Decision: January 31, 2017

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RSA 153/2015

DELHI DEVELOPMENT AUTHORITY

..... Appellant

Through: Mr.Rajiv Bansal, Mr.Shlok Chandra
and Mr.Anurag Tripathi, Advocates.

versus

**M/S ENGINEERING & INDUSTRIAL
CORPORATION PVT LTD**

..... Respondent

Through: Mr.Jagmohan Sabharwal, Senior
Advocate instructed by Mr.Vijay
Kishan Jetly and Mr.Rajneesh Vats,
Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.7543/2015 in RSA No.153/2015

1. *'It appears that cases are coming up before this Court, and probably before the High Courts also, where appeals or writ petitions are filed after inordinate delay and an explanation is sought to be given in the application for condonation of delay in such cases filed by the government or the State Authorities that the file was moved from one desk to another or the approval was sought from the higher authority which took considerable time. We feel that the beneficiary of the judgment may be hand in glove with the officials in the Government Department who deal with the files, and files are suppressed for a long period, and then the appeal before the High Court or Supreme Court is filed after a long delay to get the appeal dismissed on the ground of delay. Huge amounts of public money or public property may be involved and the Government*

will be the loser on the technical point of limitation in such cases. This racket has been going on for a long time not only before the Supreme Court but also before the High Courts. Now the time has come that this racket should come to an end and the officials responsible for this be given severe punishment.’
[State of Jharkhand & Ors. vs. Krishna Pradhan & Ors. (2020) 13 SCC 327]

2. Above observations made by the Apex Court shall be the guiding principles to deal with the instant application filed by the Delhi Development Authority for condonation of delay of 2345 days.
3. The appellant before this Court is Delhi Development Authority and the judgment dated 26th July, 2008 has been impugned by filing this Regular Second Appeal alongwith CM No.7543/2015 seeking condonation of delay of 2345 days.
4. The issue of condonation of delay and whether such a huge delay can be condoned by this Court for the reasons mentioned in the application filed under Section 5 of Limitation Act which has been supported with a list containing details of movements of the file from one desk to another with an additional affidavit, is a hurdle that DDA has to cross before making submissions as to whether this RSA raises any substantial question of law.
5. The litigation between the parties started with filing of Civil Suit No.625/2006 instituted by M/s Engineering & Industrial Corporation Pvt. Ltd. seeking a decree of injunction and pleading as under:-
 - (i) The respondent/plaintiff company purchased various types of land in Village Naraina to develop a colony which was subsequently developed and now known as Inderpuri.

(ii) Plots bearing No.ED-11 to ED-15 and C/10, 12, 15 to 21, 34, 37-A, 39, 39-A, 36, 54 and 35 formed part of Khasra No.1649, 1650 & 1651 of Village Naraina.

(iii) The Horticulture Department of the DDA tried to take possession of the above said plot despite having no right or title in the said property.

6. In the written statement, the stand of appellant/DDA was as under:-

(i) The plots in respect of which the respondent's/plaintiff's claim that they fall in Khasra No.1649 to 1651, infact fall in Khasra No.1652 of Village Naraina. The said Khasra No.1652 of Village Naraina stands acquired vide award No.1380 and physical possession of the same was also taken over.

(ii) There is encroachment by the respondent/plaintiff on the public land forming part of Khasra No.1652.

7. On the basis of demarcation report and other evidence led by the parties, the learned Trial Court decreed the suit vide judgment dated 27th May, 2006 and the finding of the learned Trial Court stand affirmed by the First Appellate Court vide impugned judgment dated 26th July, 2008.

8. As is clear from the number of this appeal i.e. RSA No.153/2015, the same has been filed after more than 6½ years of passing the impugned judgment dated 26th July, 2008.

9. I have heard Mr.Rajiv Bansal, learned counsel for the appellant/DDA and Mr.Jagmohan Sabharwal, learned Senior Advocate, Mr.Vijay Kishan Jetly and Mr.Rajneesh Vats, Advocates for the respondent.

10. Mr.Rajiv Bansal, Advocate for the appellant/DDA has submitted that the appellant/DDA being a statutory body, it works on a system of hierarchy where permissions and directions are required to be obtained at various stages before reaching the final decision and legal files have to move from one level to another which consumes precious time. He has further

submitted that frequent transfers and superannuation of senior officers dealing with the files also contributes to delay as the matter has to be re-examined by the new incumbent. For purpose of filing the appeal, the panel lawyer was engaged during vacation itself in the month of June but somehow or other the file got misplaced. As the clerk of the counsel did not make entry of the file in the register meant for this purpose, the file got mixed with disposed of matters. Only in the month of November, 2014 during the shifting of the office and in the process of cataloguing, the file could be traced out and thereafter instructions were obtained to file the appeal.

11. Mr.Rajiv Bansal, Advocate for the appellant/DDA has submitted that the property in dispute is worth crores of rupees situated in a posh colony known as Inderpuri. Collusion and connivance of DDA officials at various levels was also one of the reason that the file might have been got misplaced deliberately to give undue advantage to the respondent. Learned counsel for the appellant has relied upon Delhi Development Authority Vs. Surender Dogra and Ors., 2008 III AD (DELHI) 540, Union of India & Anr. Vs. M/s Mahalaxmi Saw Mills Pvt. Ltd. dated 19th January, 2015 passed in LPA No.2514/2005 and Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by LRs and Ors. (2 11) 2 SCC 54 in support of his prayer for condonation of delay in filing the appeal.

12. Mr.Jagmohan Sabharwal, learned Senior Advocate, Mr.Vijay Kishan Jetly and Mr.Rajneesh Vats, Advocates for the respondent have submitted as under:-

(i) The reason for seeking condonation of delay of more than 6½ years by the appellant/DDA which is a statutory body is that time is consumed to seek permission and approval from various authorities. However, the application

is silent about the details as to who were the authorities and when the matter was put up before that authorities or when the file moved from one department to another.

(ii) Even in the additional affidavit there is no discussion with regard to delay in filing the said appeal from end of May, 2010 till end of 2014.

(iii) The appeal is based on the demarcation report prepared in January, 2005 but the appeal was not filed till 25th March, 2015.

(iv) Certified copies of the impugned judgments were not filed alongwith the appeal and there is a delay of more than one year even in filing the certified copies.

(v) Learned Senior Advocate for the respondent, while relying on the decision reported as Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. JT 2012(2) SC 483, has submitted that merely because the appellant/DDA is a statutory body cannot be given any preferential treatment on the issue of limitation so as to condone the huge delay. He has also placed reliance upon Prahlad Dass Vs. Bhagirath Lal AIR 1977 DELHI 129, State of U.P. Thr. Exe. Engineer & Anr. Vs. Amar Nath Yadav JT 2014 (1) SC 494 and Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai JT 2012 (4) SC 55 in support of his contentions.

(vi) A valuable right has accrued to the respondent as the appellant failed to file the appeal within a reasonable time from the date of expiry of the limitation period. There is no satisfactory explanation coming on record to justify huge delay in filing the appeal.

(vii) This Court has power to condone the delay only if sufficient cause is shown. The Court may take a liberal approach in condoning the delay but at the same time has to bear in mind that the respondent has acquired a valuable

right after a long litigation. The appellant/DDA cannot be given any benefit just on the plea that files moved at slow pace in this statutory body or time consuming decision making process as to whether to file an appeal or not or suffers setback due to transfer or retirement of the officers dealing with such files.

(viii) Despite availing the opportunity to file additional affidavit, no sufficient cause could have been shown to condone the delay of more than 6½ years.

13. I have considered the rival contentions.

14. Various judicial pronouncements pertaining to the approach to be adopted by the Courts while dealing with the applications for condoning the delay have been cited on both the sides and perused. However, I do not intend to make a catalogue of the various judicial pronouncements cited at the Bar for the reason that the appellant before this Court is DDA and learned counsel for the DDA at the outset has argued that all this happened because of the collusion of certain DDA officials with the respondent so that the appeal gets time barred and the public interest suffers. The case of the DDA, as already noted, is that there is encroachment on the public land which has been acquired and formed part of Khasra No.1652. The plots in dispute do not fall in Khasra No.1652 but in Khasra No.1649-1651 as claimed by the respondent herein.

15. In the decision Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr. (Supra), relied upon by learned counsel for the respondent, the Bench consisting of two Judges of Supreme Court has made the following observations on the issue of condonation of delay sought by Government/Statutory bodies:-

'12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. 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 bonafide, a liberal concession has to be adopted to 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.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide 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 a few. 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.'

16. The respondent may not be able to get much assistance by placing reliance on the decision in the case of Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. (Supra) for the reason that it is a settled law that a ratio laid down by the larger Bench of Judges of the Supreme Court will prevail over the ratio of a Division Bench of Supreme Court of lesser number of Judges.

17. The decision in the case of State of Haryana vs. Chandra Mani & Ors. AIR 1996 SC 1623, is by a Bench consisting of three Judges of Supreme Court wherein it was observed that certain amount of latitude within reasonable limit is permissible having regard to the bureaucratic setup involving red-tapism. In para 8 of the report, it was observed as under:-

‘8. 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 represent collective cause of the community, does not deserve a litigant-non-grate status. The courts, therefore, have to be informed with the spirit and philosophy of the provisions 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.....’

18. When the litigant approaching the Court for condonation of delay is an instrumentality of the State and the cause espoused by it as custodian of public property, which in this case is DDA, due weightage has to be given to this fact while considering the grounds constituting sufficient cause. The principles of law which guide the Court in considering the application seeking condonation of delay and whether sufficient cause has been shown

by the appellant, it has to be considered by the Court that as against the living human being, where the party is a juristic entity, which acts through hierarchy of living human being and the file has to travel through various channel as per the administrative hierarchy of the department, this itself is a time consuming process. Even if the delay is excessive, that by itself would not be sufficient to throw out a claim as being barred by limitation as observed by the Apex Court in N.Balakrishnan vs. M.Krishnamurthy (1998) 7 SCC 123 in paras 11 and 12 of the report which read as under:-

'11. Rules of limitation are not meant to destroy the right 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. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis Mum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right 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.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, MANU/SC/0335/1968

: [1969]1SCR1006 and State of West Bengal v. The Administrator, Howrah Municipality, MANU/SC/0534/1971 : [1972]2SCR874a.'

19. In the fact of the instant case where the private parties claim their title over the suit property which consists of various plots in Inderpuri and at the same time the DDA is staking claim that these plots fall in Khasra No.1652 which has been acquired and there is encroachment by the respondent on the acquired land, it is necessary that the rival claims are adjudicated on merits within the scope of Section 100 of Code of Civil Procedure instead of rejecting the claim of the DDA on the technical ground like limitation especially when the collusion of certain officials of DDA with the private parties has been contended to be one of the major factor for this inordinate delay in filing the appeal.

20. It is a matter of fact that interest of public at large cannot be compromised for the delinquency on the part of the certain officials of DDA or the counsel representing the party. Therefore, I am of the considered opinion that delay in filing the appeal ought to be condoned to advance substantial justice as well in public interest and save the public land if it has been encroached.

21. No doubt, the respondent has also spent enough time on litigation to protect its interest claiming title over the suit property. The respondent can be compensated suitably by awarding cost but at least the matter needs to be heard on merits especially in view of the nature of litigation which as per DDA is public land. However, at the same time, those accountable for this delay in filing the appeal or who were working against the interest of the statutory body and allegedly joining hands with the private parties cannot be made to go scot-free. The Vice Chairman of the DDA is under an obligation

to set his house in order as this case may be a tip of the iceberg. A strong message is required to be sent to those officials who may be hand in glove with the private parties.

22. While allowing the application for condonation of delay of 2345 days subject to cost of ₹5 lacs to be payable to the respondent, it is also directed that the Vice Chairman of the DDA shall immediately constitute a high level committee to find out the black sheep and fix their accountability by getting the inquiry conducted expeditiously. Since complete details of movement of file from one desk to another has already been furnished by the DDA and roles of officers/officials involved in the decision making process is readily available, the committee shall complete the inquiry within three months. If for some reason more time is required to conclude the inquiry, in that situation extension shall be sought from the Court at least one week prior to the expiry of period of three months.

23. Learned counsel for the respondent, on instructions expressed their unwillingness to accept the cost awarded. As the respondent is not inclined to accept the cost of ₹5 lacs, subject to which the application has been allowed, it is hereby directed that the cost of ₹5 lacs imposed on DDA shall be deposited in Prime Minister's Relief Fund within a period of two weeks to be reckoned from today making it clear to Mr.Rajiv Bansal, Advocate that on failure of the DDA to deposit the cost within the stipulated time, the application seeking condonation of delay shall stand dismissed.

24. It is hoped and expected that the cost of ₹5 lacs so deposited by the DDA being public money shall be recovered from those found responsible for this delay from their salary, if in service and from the monetary benefit if such officials have superannuated.

25. Compliance report shall be filed with the Registry alongwith the report of the committee and the action proposed to be taken.
26. Renotify for 16th February, 2017.
27. As prayed, copy of the order be given dasti to learned counsel for the parties under the signature of Court Master.

RSA No.153/2015, CM Nos.7545/2015 & 928/2017

Renotify for 16th February, 2017.

**PRATIBHA RANI
(JUDGE)**

JANUARY 31 2017
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