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

Date of decision : 17.09.2019

+ LPA 283/2019 & CM APPL. Nos. 19950-51/2019

DELHI MERCANTILE CO OPERATIVE URBAN THRIFT &
CREDIT SOCIETY LTD Appellant

Through : Mr. Gurdeep Chauhan, Advocate.

versus

THE GOVT OF NCT OF DELHI & ORS Respondents

Through : Mr. Anuj Aggarwal, ASC for
GNCTD with Mr. Deepak Srivastava,
Advocate for R1.
Ms. Monika Kapoor, Advocate for R2
to R4.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

CM APPL. No. 19950/2019 (condonation of delay)

This application has been filed under Section 5 of the Limitation Act, 1963 read with Section 151 CPC, 1908 to condone the delay of 1231 days in filing the present appeal.

2. Mr. Gurdeep Chauhan, learned counsel appearing for the applicant/appellant submits that the present application is *bona fide* and the delay has not occurred on account of any *mala fides* on the part of the

appellant but for cogent reasons.

3. It is submitted that the present LPA arises from an order dated 20.10.2015 passed by this court in the application filed by respondents Nos. 2 to 4 bearing CM No. 13814/2015 seeking restoration of the W.P.(C) No. 1655/2012. He further submits that the appellant society had been under Administrators appointed by the Registrar of Co-operative Societies since 28.02.2015. The present Managing Committee of the appellant society was elected only on 17.09.2017 and thereafter it came to know about the pendency of writ petition bearing No. W.P(C) No. 1655/2012 once it took charge of the society from the Administrator on 20.09.2017.

4. He further submits that when the present Managing Committee took charge of the appellant society, even at that stage no proper records of the appellant society were provided to the present management. He submits that after taking-over control and perusing the records of the appellant society, various discrepancies were found and the present Managing Committee therefore filed a complaint dated 21.11.2017 against the then Administrators, since it was found that the relevant records were not available and the Managing Committee was informed that the same were destroyed by the Administrators.

5. Counsel submits that it is only thereafter that the present Management Committee started collecting relevant documents and information pertaining to the writ petition, including a copy of the writ petition itself. On obtaining the same the present application was filed, after dismissal of the Review Petition No. 161/2018 on 15.02.2019 filed by the appellant society against impugned order dated 20.10.2015.

6. Ms. Kapoor appears on behalf of respondents Nos. 2 to 4 and has

opposed the application seeking condonation of delay. She submits that the application lacks material particulars and is devoid of any merit. She further submits that the Administrator was incharge of the appellant society and the present Managing Committee is only a continuation of the management by the Administrator. She further submits that before delay can be condoned, the court must be satisfied that the delay that occurred was on account of valid and cogent reasons.

7. Reliance is placed on paras 3 and 6 of the judgment of Supreme Court in the case of ***P.K. Ramachandran Vs. State of Kerala and Another (1997) 7 SCC 566*** and paras 3 and 6 are reproduced as under:-

“3. It would be noticed from a perusal of the impugned order that the court has not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is an essential prerequisite to condonation of delay.

6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No costs.”

8. She further submits that the long delay of 1231 days in filing the present LPA remains unexplained.

9. We have heard learned counsel for the parties and considered the rival submissions made by them. The main ground urged by the applicant/appellant to condone the long delay in filing the present LPA is

that the society was managed by Administrators and thereafter the present Managing Committee took over the charge of the society on 20.09.2017. The other ground urged is that after the present Managing Committee society took-over charge, it started to collect relevant records etc. which took some time causing such delay.

10. We notice that even after the present management took-over the charge on 20.09.2017, the present applications and LPA was filed only in the month of July, 2019. The delay of nearly 2 years between the intervening period of the appointment of the present Managing Committee and filing of the present LPA remains completely unexplained. Resultantly, no ground is made-out to condone the delay.

11. For the foregoing reasons, the application stands dismissed.

LPA 283/2019 & CM APPL. No. 19951/2019 (for stay)

12. In view of the order passed in CM Appl. No. 19950/2019, the appeal and the application also stand dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 17, 2019

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