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

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Date of Decision: 18th December, 2019

+ LPA 779/2019

AIRPORTS AUTHORITY OF INDIA

..... Appellant

Through: Ms. Maninder Acharya, ASG with
Mr. Vaibhav Kalra, Mr. Varun Kalra, Mr. Vipul
Acharya, Advocates along with Ms. Shreya, Manager
(Law) and Mr. K.K. Soni, AGM (ATM)

Versus

KGA INVESTMENTS & ANR

..... Respondents

Through: Mr. Rajiv Nayar, Sr. Advocate with
Mr. Kartik Nayar, Mr. Sourabh Seth, Mr. Sarthak
Malhotra and Mr. Siddharth Mehta, Advs. for
respondent no. 1

Mr. Ajay Digpaal, CGSC for Respondent No. 2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE REKHA PALLI

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Caveat No. 1239/2019

Since learned counsel for the respondent/caveator has entered
appearance, the caveat stands discharged.

CM Appl. No. 54231/2019 (exemption)

Allowed, subject to all just exceptions.

CM Appl. No. 54232/2019 (condonation of delay of 352 days in filing)

1. This application has been preferred under Section 5 of the Limitation Act for condonation of delay of 352 days in preferring the appeal.
2. Being aggrieved and feeling dissatisfied with the judgment and order dated **20th November, 2018** passed by the learned Single Judge in **W.P.(C)No.9509/2018**, the original respondent No.2, that is, Airport Authority of India (AAI) has preferred the appeal along with the present application.
3. The grounds for delay in filing the appeal, as mentioned in the application, are as follows:-

“4. That It Is respectfully submitted that In the present case the Impugned order was passed on 20.11.2018 by the Ld. Single Judge of this Hon'ble Court in W.P(C) No. 9509/2018 titled as KGA Investments v Union of India & ors. (Airports Authority of India).

5. That as soon as the copy of the said order was received the same was sent to the Legal division of the Appellant No.1.

6. That thereafter, the same was send to the Appellate Committee whom on 18.12.2018 delegated the matter to an Official of the Appellate No. 1 to decide the case of the Respondent.

7. That thereafter, an order dated 05.08.2019 deciding the case of the Respondent was passed. The said order was passed by the Appellate No. 1 with the bonafide belief that the direction in the impugned order was to pass a fresh speaking order which was done by the Appellant No.1.

8. That however, the Appellants were surprised to receive the copy of the Writ Petition (C)No. 9912/2019 filed before the Hon'ble High Court of Delhi challenging the decision of the Appellate Authority dated 05.08.2019 vide which the request

for Aeronautical Study by the Respondent was rejected once again.

9. That in the said Writ Petition No. 9912/2019 in the proceedings held on 13.09.2019 the Ld. Single Judge observed that:-

"It is the case of the petitioner that the Impugned Order dated 05.08.2019 has been passed without giving reasons and is in the teeth of the judgment dated 20.11.2018 passed by this Court in WP(C) No.9509/2018 titled KGA Investments vs. Union of India &Ors. In fact, the Impugned Order records the very same reason which has been rejected by this Court in the above referred judgment. On the other hand, the learned counsel for respondent no.2 submits that in the said judgment relied upon, the learned Single Judge of this Court had also relied upon an earlier judgment dated 30.01.2018 passed by this Court in WP (C) 11829/2016, DBS Realty v. Union of India & Anr. Though in an appeal filed against this judgment, being LPA 238/2018, the Division Bench did not grant any interim relief to the respondent no. 2, the respondent No.2 challenged the said order by way of a Special Leave Petition, being SLP(C) No. 30725/2018, and the Supreme Court by an order dated 14.09.2018, has been pleased to stay the operation of the said order. I may only note that the effect of the stay order was also contended by the respondent No.2 in the earlier round of litigation, which resulted in the judgment dated 20.11.2018. Be that as it may, the judgment dated 20.11.2018 (supra) was not appealed by the respondent no. 2 and, in fact, the Impugned Order purports itself to have been passed in compliance thereof. The Impugned Order seems to have reiterated the same reason which was rejected by this Court in its judgment dated 20.11.2018 referred hereinabove.

10. That in view of the fresh circumstances and the observations that have fallen from the Hon'ble Single Judge in the proceedings dated 13.09.2019, Legal opinion was also

sought due to the unique situation that had arisen. The copy of the order dated 13.09.2019 is Annexed hereto as ANNEXURE AX-1.

12. That further multiple rounds of meetings were required with the officials of the Department since the case is quite technical in nature.

13. That thereafter, it was decided by the competent Authority of the Appellant that a challenge was to be made before the Hon'ble Division Bench of the High Court to the order dated 20.11.2018. That otherwise, the said Order would act as a precedent and the Appellant would have to necessarily first conduct the AS before demolition not only for the Petitioner but also for all other such parties which are in violation of NOC granted to them and request for such Aeronautical Study and it would open up a Pandora's box.

14. That this Intent was submitted before the Ld. Single Judge in the proceedings held on 23.10.2019. It is respectfully submitted that such a situation, cannot be allowed to continue as it would become a precedent and other parties would also use the impugned order dated 20.11.2018 to first commit gross violations with respect to illegal constructions and thereafter ask the Appellant to conduct Aeronautical Survey to delay or altogether avoid demolition of illegal constructions, posing a continuous threat to security of flights thereby opening a Pandora's Box and would subject the Appellant to a plethora of litigation.

15. That in the meanwhile, the present Appeal was drafted and sent for necessary vetting and approval. That since the Appellant is a Govt. organization every action has to be approved through a proper channel by the Competent Authority and since the drafted Appeal had to be approved by the Competent Authority of AAI after going through various channels and therefore further time was taken.

16. That thereafter, as soon as the Appeal was approved the same was sent to the counsel for the Appeal for filing however, it is submitted that in the meanwhile the 30 days time stipulated had expired hence the present Application is being filed alongwith the Appeal seeking condonation of delay .

17. That since the matter is quiet sensitive nature and dealt with the way selection is to be done in the Appellant it was also decided that the Appeal ought to be vetted by the Ld. ASG that after getting the Appeal vetted the same was filed. That in the meanwhile the entire record was also collected to be filed with the Appeal.”

4. Learned ASG appearing for the appellant submitted that by the impugned order dated 20th November, 2018, the order initially passed by the Appellate Committee on 31st July, 2018 was quashed and set aside, furthermore, the matter was remanded back to the Appellate Committee for carrying out aeronautical survey without demolition of the subject building which order of the learned Single Judge is under challenge in the present appeal.

5. Pursuant to the aforesaid order dated 20th November, 2018 passed by the learned Single Judge, the matter was remanded back to the Appellate Committee and upon receiving the same, the Appellate Committee passed an order dated 5th August, 2019 holding that the aeronautical survey could not be carried out without demolition.

6. Learned ASG appearing for the appellant submitted that in view of the impugned order dated 20th November, 2018, the matter was remanded to the Appellate Committee for carrying out aeronautical survey without demolition of the subject building, without appreciating that the No Objection Certificate

(‘NOC’) granted by the appellant was for ‘X’ meter of height from the sea level whereas the height of the building in existence is of ‘X + Y’ meter and, therefore, an application for increase in the height could not be appreciated without demolition of additional height of ‘Y’ meters. As the order initially passed by the Appellate Committee on 31st July, 2018 was quashed and set aside by the impugned order and the matter was remanded back to the Appellate Committee, the same is under challenge in the present appeal.

7. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, we see no reason to condone the delay in filing the appeal for the following reasons:-

- i) In this application there are no reasonable grounds for condonation of delay of 352 days in filing the appeal.
- ii) The judgment and order of the learned Single Judge in **W.P.(C)No.9509/2018** is dated **20th November, 2018**. It appears that by virtue of this order, the matter was remanded to the Appellate Committee, which had again taken a decision on 5th August, 2019 and the same is also the subject matter of a fresh writ petition being W.P.(C) No.9912/2019.
- iii) When we specifically enquired from the learned ASG appearing for Union of India as to when did they apply for the certified copy and when was it ready to be received, the learned ASG was unable to answer the said query.
- iv) It further appears from the reasons given in this application that after the impugned order was passed by the learned Single Judge

remanding the matter to the Appellate Committee, a fresh order was passed on 5th August, 2019. Thus, the appellant was fully aware of the aforesaid order passed by the learned Single Judge dated 20th November, 2018 and is evident from the fresh order passed by the Appellate Committee dated 5th August, 2019.

- v) Thus, there is a negligent approach on the part of the appellant in both, appreciating the order passed by the learned Single Judge and moving the matters speedily in its Department for preferring an appeal.
- vi) The reasons given in the application in paragraph (4) onwards cannot be said to be sufficient cause or reasonable grounds for condonation of **delay of 352 days.**

8. It has been held by Hon'ble the Supreme Court in *Postmaster General v. Living Media India Ltd.*, (2012) 3 SCC 563 as under:-

“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 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 the government bodies, their agencies and instrumentalities that 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a 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.” (*emphasis supplied*)

9. In ***Basawaraj v. Land Acquisition Officer, AIR 2014 SC 746***, the Hon’ble Supreme Court further held as under:-

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while

interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510] , Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

14. xxx xxx xxx

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In

case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.” (emphasis supplied)

10. In view of the aforesaid decisions and looking to the grounds mentioned in this application, we see no reason to condone the delay of 352 days in filing the appeal.

11. The application is accordingly dismissed.

LPA 779/2019 & C.Ms.No.54230/2019 (stay) & 54233/2019 (Addl. docs.)

12. Since, the application for condonation of delay has been dismissed, consequently, the appeal and C.M.s No.54230/2019 and 54233/2019 also stand dismissed.

CHIEF JUSTICE

REKHA PALLI, J.

DECEMBER 18, 2019

‘anb’