

06.07.2022
SL No.12
Court No.8
(gc)

**FA 182 of 2019
CAN 10769 of 2012
CAN 3479 of 2013**

**State of West Bengal
Vs.
Samir Kumar Sarkar**

(Through Video Conference)

Mr. Lalit Mohan Mahata, A.G.P.,
Mr. Prasanta Behari Mahata,
...for the Appellant.
Mr. Debayan Bera,
Mr. Sakti Prasad Chakraborti,
...for the Respondent.

There is a delay of 2213 days in preferring this appeal.

The appeal is arising out of an award dated 30th July, 1992. On a reference being made under Section 18 of the Land Acquisition Act of 1894 by the claimant, the Special L.A. Judge, Alipore, South 24-Parganas by a judgment and decree dated 5th August, 2006 modified the award and enhanced the compensation amount. The appellant-State contends that on 21st September, 2006, the petitioner received a judgment and decree, on 8th December, 2006, the appellant sought for a decision from the L.A & L.R. department and receiving no instruction, a reminder was given on 4th May, 2007. On 1st October, 2009, the Government decided to prefer the appeal and one Mr. M.M. Das, learned Senior Advocate was engaged by the State to prepare the appeal. It is claimed that due to procedural

hierarchy and pushing of the file and obtaining the approval, the appeal could not be filed in time. In the meantime election was held in the year 2011 and separate panel was prepared of the Government Advocates on 13th August, 2012, Mr. Lalit Mohan Mahata, learned Junior Government Advocate was engaged for filing the appeal. On 19th September, 2012, relevant papers were claimed to have been made available to Mr. Mahata who prepared a draft and thereafter the appeal was filed on 19th November, 2012 without any application for condonation of delay. The Stamp Reporter in its report dated 13th December, 2012 has mentioned this fact consequent whereupon on 21st November, 2012 an application was filed for condonation of delay. A prayer for condonation of delay can be allowed provided the Court is satisfied that there is sufficient cause. The term “sufficient cause” may be construed liberally either in absence of any inaction or negligence or want of bona fide of the party concerned. The pushing of the file at every stage in paralyzing the matter have been shown as the cause for not preferring the appeal. We cannot ignore the fact that the Government cannot stand in a better position than that of a litigant in matters of condonation of delay although at times we have taken a liberal view taking into consideration that the Government decisions are slow and encumbered. At the same time, we cannot ignore the fact that a valuable right has been accrued in favour of the appellant who has been deprived

of the benefit of the judgment passed by the learned Special Judge on 5th August, 2006, in fact, the award was passed on 30th July, 1992. The proceeding was initiated under Section 12 (2) of the Land Acquisition Act of 1894. On 5th November, 1998, notice under Section 4 of the Land Acquisition Act-I of 1894 was issued upon the claimant. Any liberal construction of the sufficient cause in the instant case would cause more prejudice and injustice to the claimant in the event the application for condonation of delay is allowed by taking a liberal view. The Government cannot be beneficiary of its own culpable negligence and wrong.

The petition itself reveals that there is a considerable delay first in seeking the information from the L.R. Department in preferring the appeal and thereafter there has been inaction and culpable negligence of the appellant in pursuing the matter at every stage.

In view of the fact that we are not satisfied with the explanation offered for not preferring the appeal beyond the period of limitation and within a reasonable time, we are not inclined to allow the application for condonation of delay.

Accordingly, the application for condonation of delay is dismissed.

In view of dismissal of the application for condonation of delay, the appeal and the application stand dismissed.

However, there shall be no order as to costs.

In view of dismissal of the appeal, we direct the Executing Court to proceed with the execution proceeding expeditiously as the pendency of this appeal was shown to be the cause for delaying the execution proceeding although no order of stay was ever obtained from this Court. It is also significant to mention that although the application was filed on 21st November, 2012, no attempt was made for early disposal of the said application.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)