

21.06.2023
Sl. No.3(DL)
srm

C.O. No. 1445 of 2021

The General Manager, Metro Railway, Kolkata

Versus

M/s. Narayan Shaw Enterprises Pvt. Ltd.

Mr. Kumaresh Dalal

...for the Petitioner.

Despite service, none appears on behalf of the opposite party. Affidavit of service is taken on record.

This revisional application has been filed against an order passed by the Appellate Authority, Metro Railway, Kolkata in Claim Appeal No.01 of 2020. The claim appeal arose out of an order passed in Acquisition Claim Case No.JB/132/2014 by the competent authority, Metro Railway, Kolkata.

The learned Appellate Authority rejected the application under Section 5 of the Limitation Act. There was a delay of 478 days in filing the appeal. The learned Appellate Authority found that the explanation given by the Metro Railway authorities were not satisfactory, in fact, unconvincing. While deciding the issue, the learned Appellate Authority also considered the merit of the appeal and came to the conclusion that the point of joint inspection as raised in the appeal did not

have any merit in itself and hence upon finding that the Metro Railway authority did not have a strong case rejected the application under Section 5 of the Limitation Act, *inter alia*, finding the explanation to be inadequate and insufficient.

This Court has gone through the application under Section 5 of the Limitation Act. The appeal ought to have been preferred within 60 days from the date of order. It is an admitted position that there has been a delay of 478 days. The statutory period for filing the appeal expired on October 15, 2018.

The explanation given by the Metro Railway authorities is quoted below:

“The Metro Authority took a long time to take such decision due to delay caused which was/is beyond control of this authority. As the time of processing this case, it was discovered that some portion of the land in question of this case is overlapping with other cases. It took a long time to find out the whereabouts of those cases as mentioned in the Appeal petition. And it is so voluminous that day to day explanation of delay is next to impossible which may kindly be excused. It is only at the end portion of January, 2020 when Metro Railway decided to file appeal finding no other alternative as it observed that without Joint Inspection of this case, the whole issue will never be resolved. Thereafter some days were required for some inter departmental procedure and drafting of this appeal by the Ld. Advocate of Metro Railway.”

The only explanation is that at the time of processing it appeared that the quantum of land overlapped with those

lands in respect of which the acquisition claims cases are pending. It has been further stated that the case papers were so voluminous that day to day explanation of the delay was next to impossible. In the end of January, 2020 the Metro Railway decided to file appeal.

The learned appellate authority found that the plea of looking for records, holding a joint inspection to ascertain the exact quantum of land, were baseless. Several rounds of inspections took place before the notifications were issued. The land revenue department was also present with the records during such inspection. Acquisition was made in 2012, but the money had not been paid to the land loser. The claim was decided in 2018 and the appeal was filed in 2020.

The causes shown are that (a) the delay was beyond control, (b) It took a long time to trace out the other case records, (c) record are voluminous so day to day explanation could not be provided.

None of the above are sufficient cause to condone the delay. Why the delay was beyond control, has not been explained. Which cases were being referred to in order to check the overlapping of the lands, have not been mentioned. Information as to when the authorities traced out the records and compared them with the records of the instant case, have

been cleverly withheld. The records which were allegedly 'voluminous' and the time taken to compare the same, have not been explained. It is the admission of the Metro Railways that it was "impossible" to explain the delay. This itself indicates lack of "sufficient cause". Not a single date nor the time line have been mentioned in the grounds made out seeking condonation of delay.

The expression 'sufficient cause' has been explained by the Hon'ble Apex Court in the matter of *Basawaraj v. Land Acquisition Officer*, reported in (2013) 14 SCC 81, the Apex Court held as follows:-

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether

the mistake is bona fide or was merely a device to cover an ulterior purpose."

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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."

In the matter of *The State of Madhya Pradesh & Ors. vs.*

Bherulal decided in *Special Leave Petition (C) Diary No. 9217*

of 2020 the Hon'ble Apex Court held as follows:-

"3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:

"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 redtape 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."

The explanations given by the Metro Railways are not only inadequate and vague, but casual and demonstrative of

lack of diligence. There is lack of bonafide. The appeal has been filed on the ground of discrepancy in the quantum of land which was never taken before the competent authority, although the proceeding was contested. The appeal was filed with an ulterior motive to stall the payment. It is not expected that an authority will not explain the delay and seek condonation on the ground that records were so voluminous, that explanation of the delay was 'impossible'. This indicates highhandedness and should not be encouraged. There is not a single line which would explain when and how the authorities tried to process the matter, how the time was consumed after the order was passed by the competent authority. The lands of the people have been acquired. Prior to such acquisition, measurements were taken by the authorities. Only after such measurements were taken, notifications were published. Hence, the subsequent plea that a joint inspection should be made after the decision in the claim case, does not hold any ground especially because it appears to the Court that the appeal was filed as an afterthought and not a single explanation for the delay has been provided. Such point was never raised before the competent authority. The Metro Railway authorities have failed to narrate the actions taken by them during the intervening period which would show that

the authorities had not wasted the time but had acted diligently and remained active and there were justifiable grounds for the delay caused during the said period when the authorities were preparing to prefer the appeal with better particulars.

Thus, this revisional application is dismissed.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)