

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

APOT/150/2023
[WPO 595/2017]
IA NO: GA/1/2023

ASHIS KUMAR CHAKRABORTY
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 12th September, 2023.

Appearance:

Mr. Raghunath Chakraborty, Adv.
Mr. Mehboob Ahmed, Adv.
Ms. Tanusree Das, Adv.
....for appellant.

Mr. Ranajit Chatterjee, Adv.
Md. Manisha Nath, Adv.
... for KMC.

THE COURT: This is an application for condonation of delay of 1757 days in presenting the appeal against the judgement and order dated May 3, 2018. The application for condonation of delay was affirmed on April 20, 2023 i.e. almost five years after the judgement and order sought to be challenged was passed by the learned Single Judge.

When the application was moved, learned Advocate for Kolkata Municipal Corporation (in short "KMC") requested for time to file affidavit-in-opposition. We directed exchange of affidavits on the

application for condonation of delay. Affidavits have been exchanged. Today, we have taken up the application for hearing.

Mr. Chakraborty, learned Advocate appearing for the applicant took us through the petition for condonation of delay and in particular, through paragraphs 19 to 22 of the petition, which read as follows:-

“19. The petitioner soon after passing of order dated 3rd May 2018 in writ petition being W.P. No. 595 of 2018 had requested his Learned Advocate to apply for the certified copy of said order dated 3rd May 2018 passed in W.P. No. 595 of 2018. The petitioner state that the Learned Advocate of the petitioner due to his personal pre-occupation did not come to this Hon’ble Court from 04.05.2018 till 17.05.2018. On 18.05.2018 the petitioner through his Learned Advocate had applied for the certified copy and same was made ready for delivery on 04.07.2018.

20. The petitioner was not well since first week of July 2018 till February 2023. Soon upon some recovery the petitioner contacted his Learned Advocate to ascertain the whereabouts of the said certified copy of order dated 03.05.2018 passed in W.P. No. 595 of 2018 and said certified copy of order dated 03.05.2018 was collected by the clerk of Learned Advocate. The petitioner soon thereafter had conference with his Learned Advocate and in course of conference the petitioner was suggested by his Learned Advocate to challenge the propriety of order

dated 03.05.2018 passed in W.P. No. 595 of 2018 by presenting appeal.. The petitioner had requested his Learned Advocate to draft the appeal and connected application. The appeal was made ready and there is delay of 1757 days in presenting the appeal.

Copy of all medical relevant documents are enclosed herewith and marked as annexure "C".

21. That the wife of the petitioner had been suffering from Covid 19 which also prevents petitioner to take appropriate steps.

Copy of illness relevant paper are enclosed herewith and marked as annexure "D".

22. The petitioner state that there is no deliberate and/or intentional latches and/or negligence on the part of the petitioner in filing the appeal belatedly."

Learned Advocate also took us through the annexures to the petition which start at page 12 and end at page 92. Most of the annexures are xerox copies of medical documents including prescriptions advising certain medical tests and medical test reports. We have gone through such medical documents. We do not find that the applicant was suffering from any such serious ailment over a period of almost five years which would have prevented him from filing appeal against the judgement and order sought to be challenged now.

The explanation furnished in the petition is not convincing. It is also not sufficient. There is a sweeping statement that the petitioner was not well since first week of July, 2018 till February, 2023, which can be hardly said to be a satisfactory explanation for the delay of five years in presenting the appeal.

We further find that the medical documents all pertain to a period prior to December, 2021. In so far as 2022 and 2023 are concerned, there are certain medical test reports which are in no manner alarming.

While we are normally liberal in condoning delay for the ends of justice, it would not be proper to condone the delay of almost five years when we are not satisfied with the explanation furnished for the delay.

A major part of the petition for condonation of delay consists of paragraphs pertaining to the merits of the case and merits of the order of the learned single Judge. We are not inclined to consider the same since we are not inclined to condone the delay in the first place.

Accordingly, the application for condonation of delay is dismissed and consequently the appeal stands dismissed.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)