

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/62/2023
with
WPO/102/2023
IA NO:GA/1/2023

JOYDEEP MONDAL
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

And

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 22nd June, 2023.

Appearance:

Mr. Suvadeep Sen, Advocate
Mr. Sabyasachi Santra, Advocate
...for the appellant

Mr. Alak Kumar Ghosh, Advocate
Mr. Swapan Debnath, Advocate
Mr. G. C. Das, Advocate
..for the KMC

Mr. Supratim Bhattacharjee, Advocate
Mr. Kaunish Chakraboorti, Advocate
..for the respondent no.9

The Court: Affidavit of service filed in Court today be kept with the records.

A judgement and order dated May 2, 2023, whereby the appellant's writ petition being WPO/102/2023 was dismissed, is under challenge in this appeal.

It appears that the appellant/writ petitioner lodged a complaint with Kolkata Municipal Corporation (in short, "KMC") to the effect that the

private respondent was making illegal construction at the concerned premises. It also appears that he sent repeated reminders to KMC to take steps against such unauthorised construction.

It is the appellant's case that in the year 2017-18, he came to learn that demolition proceedings had been initiated in respect of the unauthorised construction. The proceedings culminated in an order permitting the private respondent to retain the unauthorised construction subject to complying with certain formalities. This order was passed by the Special Officer (Building) on January 31, 2014.

Being aggrieved by the order of the Special Officer (Building), the appellant herein filed a writ petition being WP No. 16846(W) of 2017. Noticing that the order allowing retention is an appellable one, the learned Judge disposed of the writ petition by an order dated June 22, 2018, by granting liberty to the writ petitioner therein (present appellant) to prefer statutory appeal before the Municipal Building Tribunal within a fortnight and the Appellate Authority was requested to consider such appeal to be within the period of limitation, if filed within a fortnight.

Being aggrieved by the order of the learned Judge, the appellant herein filed a review petition being RVW No.100 of 2018. The review petition was dismissed by the Court on August 31, 2018.

Challenging the order dismissing the review petition, the appellant herein preferred an appeal before the Division Bench being MAT 1261 of 2018. The appeal was dismissed on July 2, 2019.

After dismissal of the aforesaid appeal, the appellant herein sought to file the statutory appeal against the order of retention passed by the Special Officer (Building) on January 31, 2014. The statutory appeal was numbered as BT Appeal No.102 of 2022 but was not admitted by the Tribunal on the ground of delay. The appeal stood disposed of by an order dated August 31, 2022.

Challenging the order of the Tribunal, the appellant approached the learned Single Judge in the present round of litigation.

The arguments advanced by the appellant/writ petitioner before the learned Judge as also before us are substantially the same. It was urged that the appellant, who lives abroad, relied fully on his learned advocate and acted upon the advice of his advocate. Secondly, outbreak of the pandemic was cited as a ground for delay in approaching the Tribunal. Thirdly, it was contended that the appellant has a genuine grievance, which is substantial in nature. On the technical ground of limitation, the appellant should not be thrown out of Court. The decision of the Hon'ble Supreme Court in the case of *Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.*, reported at (2013) 5 SCC 336 was cited in support of his submission that no construction in deviation from a sanctioned plan can be allowed to stand. Several decisions of the Hon'ble Supreme Court as also of this Court, as noted by the learned Judge, were referred to, to argue that a liberal approach should be taken while deciding the issue of delay for causing substantial justice to the litigating parties. A decision of the Kerala High Court in the case of *Sebastian Chokkattu vs. Industrial*

Development Bank of India, reported at 2006 SCC Online Kerala 106 was relied upon to buttress the submission that the appellant, being a non-resident Indian, relied upon his advocate and it cannot be said that the appellant was not being vigilant in prosecuting the litigation.

Learned advocate for KMC naturally opposed the writ application. He pointed out that the appellant, although a non-resident Indian, has executed a power of attorney in favour of his brother who stays at the concerned premises. It was the duty of the power of attorney holder to proceed with the matter diligently.

After recording the arguments advanced by the respective parties, the learned Single Judge came to the conclusion that the writ petitioner (present appellant) should have approached the Appellate Authority within the time period granted by this Court while disposing of the WP No.16846 (W) of 2017. The learned Judge also observed that the writ petitioner ought to have sought extension of time from the Division Bench at the time of the Division Bench dismissing the appeal against the order rejecting the application for review of the learned Single Judge's order in the earlier round of litigation, for preferring statutory appeal before the Tribunal. The appellant approached the statutory appellate forum on June 7, 2022. The time period granted by this Court for filing statutory appeal, had expired long time back.

The learned Judge further observed that it would be improper to reopen the entire issue all over again when the matter was put to rest in 2014 by the order of the Special Officer (Building) permitting retention of

the alleged unauthorised construction or part thereof. The learned Judge observed that law prescribed a period of limitation to reach a proceeding to its logical conclusion. Litigation has to end somewhere. A litigant should not have to wait for eternity to know the fate of a legal proceeding. Finally, the learned Judge dismissed the writ petition with the following observations:-

“Once time limit has been framed by the court, it is the duty of the litigant to act within the said time frame. If for any reason the timeline fixed by the court cannot be adhered to, then it is the duty of the litigant to seek extension of time for acting in accordance with the said order. Till the time limit is extended by the court, then any act done beyond the fixed time frame becomes barred by the principle of limitation. Admitting the appeal filed beyond the extended time period would be acting contrary to the order passed by this court.

The delay may be because of incorrect legal advice and may not be intentional or deliberate but the said erroneous delay is fatal in the facts and circumstances of the instant case. There is hardly any scope to put the clock back for revisiting the issue all over again. The chapter of illegal construction has to be taken as closed.

The Tribunal rightly refused to admit the appeal. The court does not find any reason to interfere with the order passed by the building tribunal.”

Being aggrieved, the writ petitioner is before us by way of this appeal. We have heard Mr. Sen, learned advocate for the appellant, at some length. Mr. Sen tried to impress upon us that there was no laches on the part of his client. He submitted that although the demolition case was initiated on the basis of his complaint, the Special Officer (Building) did not

notify him of any demolition proceeding. As such, the order of retention passed by the Special Officer (Building) is in breach of the principles of natural justice. He submitted that technicalities should give way to substantive justice. He requested us to condone the delay and direct the appellate forum to entertain and decide the statutory appeal on merits.

We have not called upon the respondents to argue.

Normally, Courts are liberal on the issue of condonation of delay. No doubt, substantive justice should prevail over technicalities. However, we do not think that the laws of limitation embody mere technicalities. An aggrieved party cannot approach a legal forum at his sweet will and at any point of time after the alleged cause of action arises. Similarly, if the statute prescribes a time period for preferring an appeal against an order of a subordinate forum, the same must be adhered to, subject to, of course, condonation of delay, if there is provision for such condonation. The laws of limitation have been framed to ensure finality in litigation.

In the present case, once the appellant came to know of the impugned order of the Special Officer (Building), he should have immediately approached the statutory appellate forum. He says that he came to know of the order only in 2017 and immediately approached the Writ Court. This was obviously a wrong step that he took. Nonetheless, the learned Judge before whom the writ petition was heard granted liberty to the appellant to file the statutory appeal within a fortnight from the date of the Learned Judge's order with a request to the statutory appellate authority to decide the appeal on merits considering the same to have been

filed within the period of limitation. The appellant did not avail of this opportunity. He applied for review of the learned Judge's order. The learned Judge rightly dismissed the review petition. The appellant went up in appeal. The Division Bench dismissed the appeal. This was on July 2, 2019. The appellant did not seek extension of time to file the statutory appeal when the Division Bench dismissed the appeal against the order rejecting the review application.

After that, for almost three years, the appellant did nothing. It was only in June 2022 that the appellant sought to file the statutory appeal. Even if we accept the explanations furnished by the appellant for the delay till 2017 and for the period thereafter till the dismissal of the appeal by the Division Bench, we are not satisfied that any acceptable explanation has been given by the appellant for the inaction on his part for about three years from the dismissal of the appeal against the order rejecting the review application and filing of the statutory appeal.

A litigant who sleeps over his right deserves no indulgence or sympathy from a court of equity. We are not satisfied that the appellant acted diligently or that there was no laches or default on his part. In any event, the appellant not having sought extension of time to prefer statutory appeal from this Court, the Tribunal cannot be faulted for having not entertained the appellant's statutory appeal.

We have carefully gone through the judgement and order under appeal. We find no apparent infirmity therein. It is a well-reasoned and

well-considered order. We agree with the learned Single Judge that this is not a case where the appellant deserves any relief.

The appeal and the connected application are, accordingly, dismissed.

There will be no order as to costs.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY J.)