



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9144 OF 2023

The National Small Industries Corporation Ltd.

...Petitioner

Versus

Gita Corporation & Anr.

...Respondents

Mr. Amit Sale i/b P. Prabhakaran for the Petitioner.

Mr. Surel Shah i/b Mr. Abhijeet Deshmukh for Respondent No. 1.

Mr. C. D. Mali AGP, for Respondent No. 2-State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 2, 2023

P. C. :

1. Heard.

2. The rejection of the Petitioner's Application for condonation of delay of 159 days in preferring Appeal against the order of the Trial Court in a Mesne Profit Application, came to be dismissed.

3. Learned counsel for the Petitioner submits that, the Petitioner is a Public Sector Undertaking and the Application for mesne profit came to be decided vide judgment and order dated 7th March, 2022. He would submit that, the possession of the premises has been handed over. According to him, sufficient cause was shown for delay of 159 days as the

files had to be relocated and information for Appeal had to be compiled from various officers and lawyers who had handled the case over a period of time. He submits that, the Application is required to be liberally considered, inasmuch as it is a Public Sector Undertaking and various permissions are required to be obtained before an Appeal can be filed.

4. Mr. Shah, learned counsel for the Respondent submits that, the conduct is nothing, but lethargy. He would submit that, the purpose is only to delay as the execution application has been filed. In support of his submission, he relies upon the decision of the Apex Court in the case of *State of Uttar Pradesh & Ors. vs. Sabha Narain & Ors.* [(2022) 9 SCC 266] and *State of Madhya Pradesh & Ors. vs. Bherulal* [(2020) 10 SCC 654]. He submits that, in these decisions, the Apex Court has deprecated the practice and has termed such cases as certificate cases filed with only to object to obtain a *quietus* from the Apex Court on the ground that nothing could be done because highest court has dismissed appeal.

5. Considered the submissions and perused the record.

6. This is not a case where there has been a delay of number of years in filing the appeal against the order of mesne profits. No doubt at the stage of the execution application being filed, the appeal is sought to be filed. The delay in the present case cannot be said to be such a

considerable and substantial delay, so as to term the same, as lethargy on part of the Public Sector Undertaking. It is a matter of common knowledge that in case of Public Sector Undertaking/ Government offices, the movement of the files is slow and without appropriate permission being in place, the Appeals could not have been filed. In my view, an hyper technical approach has been adopted by the Appellate Court while rejecting the Application for condonation of delay. The cause set out in the Application cannot be said to be inadequate, so as not to be considered liberally. The provisions of Section 5 of the Limitation Act are elastic enough to apply the law in a meaningful manner to sub-serve the ends of justice. In my opinion the Petitioner which is an Public Sector Undertaking is required to given an opportunity to contest the matter on merit.

7. For the foregoing reasons, the Petition is allowed .

8. The impugned order dated 20th March, 2023 is quashed and set aside. Consequently, the Marji Application No. 358/2022 is allowed.

(SHARMILA U. DESHMUKH, J.)