



2023:DHC:8784



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 07.12.2023

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RFA 334/2022**MUNICIPAL CORPORATION OF DELHI**

..... Appellant

Through: Mr. Dhanesh Relan, Standing
Counsel for MCD with Mr.
Arindam Dey & Mr. Aditya
Pandey, Advocates.

versus

JAI PRAKASH

..... Respondent

Through: Mr. Rajesh Yadav, Senior
Advocate with Mr. Anirudh Bakru,
Mr. Umang Tyagi, Mr. Ayush
Puri, Mr. Desh Deepak, Mr.
Anurag Chajlani, Ms. Vijay Laxmi
Rathi, Mr. Sultan Haider Jafr &
Mr. Kanav Madnani, Advocates.
[M:-9999178173]

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****J U D G M E N T****PRATEEK JALAN, J. (ORAL)****CM APPL. 33193/2022 (for exemption)**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM APPL. 33192/2022 (for condonation of delay)

1. This is an application for condonation of delay of 2108 days in filing of an appeal against a judgment and decree dated 27.05.2016,



passed by the learned Additional District Judge, North District, Delhi in CS 239/2015. By way of the impugned judgment, the learned Trial Court has decreed a suit filed by the respondent/ plaintiff for possession of the suit property bearing No. A-21, Khasra No. 35, Revenue Estate of village Bharolla, alongwith *mesne* profits/damages and costs.

2. According to the filing details available, the present appeal was filed only on 27.07.2022. Mr. Dhanesh Relan, learned Standing Counsel for the appellant – Municipal Corporation of Delhi [“MCD”], states that the appeal was in fact filed in the month of May, 2022, but cleared only in July, 2022. Having regard to the admitted extent of the delay, this minor discrepancy need not detain us.

3. In the application for condonation of delay, MCD has stated that, after the passing of the impugned judgment, the file was sent to its learned counsel for filing of the appeal. Counsel required certain documents to be supplied, which could not be done due to the fact that the Keshav Puram Zone was created from the Civil Zone of the MCD in the interregnum, and the files of the case were mixed up with other files. The application contains no other averments, save for reliance upon the order of the Supreme Court in *Suo Moto* W.P.(C) 3/2020 [*In Re: Cognizance for Extension of Limitation*], whereby the limitation period for filing of the proceedings has been extended by approximately two years during the COVID-19 pandemic.

4. The appeal was first listed before the Court on 29.07.2022, when the appellant was granted time to file an additional affidavit to explain the delay. The additional affidavit was filed on 03.09.2022, and contains largely the same averments as in the original application. The only



additional fact mentioned is that MCD has appointed an inquiry committee to fix responsibility for the delay.

5. The judgments of the Supreme Court dealing with the principles for condonation of delay make it clear that the Court is required to undertake a fact-based examination of the sufficiency of the cause shown by the appellant. In *Basawaraj vs. Land Acquisition Officer*,¹ the Supreme Court noted that where a case has been presented beyond limitation, the applicant has to provide sufficient cause for the same, i.e., “*an adequate and enough reason which prevented him to approach the court within limitation.*” Mr. Rajesh Yadav, learned Senior Counsel for the respondent, relies on *Balwant Singh v. Jagdish Singh and Others*,² where the Supreme Court observed that even if the term “*sufficient cause*” is read liberally, “*it must squarely fall within the concept of reasonable time and proper conduct of the party concerned,*” and the Court should take into account “*whether such delay could easily be avoided by the applicant acting with normal care and caution.*” In *University of Delhi vs. Union of India*³ also, the Court held that, if an inordinate delay was condoned without taking into consideration the “*lackadaisical manner in which the appellant has proceeded in the matter, it would also be contrary to public interest.*”

6. In the context of application of these principles to a government body, such as MCD, Mr. Yadav relies upon various judgements to urge that a lenient attitude ought not to lead to condonation of unexplained and inordinate delay caused by a government agency. In *Postmaster General*

¹ (2013) 14 SCC 81, para 15.

² (2010) 8 SCC 685, para 25 and 38.



and Others v. Living Media India Limited and Another,⁴ the Supreme Court, while dismissing appeals on the ground of delay, observed that “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 the government departments.” Similarly, in *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*,⁵ the Supreme Court set aside an order of a Single Judge of the Bombay High Court condoning delay of over 7 years, and held that, in cases involving the State and its agencies/instrumentalities, the Court can allow for sufficient time for decision-making process, but “total lethargy or utter negligence on the part of the officers” can be given no premium. In *State of M.P. v. Bherulal*,⁶ the Supreme Court dismissed a Special Leave Petition as time-barred, and in fact, imposed costs upon the state authority for wastage of judicial time. In *Govt. of NCT of Delhi v. Satbir and Another*,⁷ this Court dismissed an application for condonation of delay in filing a review petition and held that courts may take an accommodative view regarding cases filed by government departments, but this does not extend to “accommodating and condoning all inordinate or unjustifiable delays by the governmental agencies.”

7. While generally a liberal approach is adopted in matters of condonation of delay, the settlement of vested rights upon a decree holder is also a factor to be borne in mind. In *Ramlal, Motilal and Chhotelal v.*

³ (2020) 13 SCC 745, para 31.

⁴ (2012) 3 SCC 563, para 29.

⁵ (2012) 5 SCC 157, para 25.

⁶ (2020) 10 SCC 654.



Rewa Coalfields Ltd.,⁸ the Supreme Court recognised that the lapse of the period of limitation for filing of the appeal “gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties,” and held that “this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed.”

8. The facts of the present case do not in my view afford adequate explanation for the Court to return a finding of “sufficient cause” under Section 5 of the Limitation Act, 1963, in favour of the appellant. The delay of over six years cannot be explained away on an averment of a communication error. Neither the application nor the subsequent affidavit contains any particulars as to the dates upon which counsel was instructed to file an appeal, or the dates upon which subsequent communication took place between the counsel and the officials of MCD. No documents whatsoever have been placed on record in support of the application. In the present case, there is no evidence on record to demonstrate any effort on part of the MCD to follow up or keep track of the case. The mere explanation that the relevant documents could not be provided due to a communication error between the departments of the appellant is, in my view, wholly insufficient to justify inordinate delay of this extent. Even assuming the contents of the application and additional affidavit to be correct, there is absolutely no explanation for the delay between 2016 to 2022, nor any indication or evidence that MCD was following up on the matter with counsel.

9. Even with regard to the COVID-19 lockdown and consequent

⁷ 2022 SCC OnLine Del 1433, para 4.

⁸ (1962) 2 SCR 762, para 7.



extension of time granted by the Supreme Court, Mr. Yadav relies on the judgement of this Court in *Bharat Kalra v. Raj Kishan Chabra*⁹ to submit that an application for condonation of delay cannot be allowed automatically, and it is only when “*the limitation has expired during the lockdown and even the extended period, which can be allowed in the discretion of the court.*” In the present case, since the impugned judgement is of 27.05.2016, the period of limitation admittedly expired much prior to the COVID-19 pandemic.

10. For the aforesaid reasons, the application for condonation of delay is unmerited, and is hereby dismissed.

11. Needless to say, this order will not come in the way of MCD in carrying out an inquiry as indicated in the additional affidavit and taking necessary consequential action against the erring officials.

RFA 334/2022 & CM APPLs. 33191/2022 and 33194/2022

As a consequence of the order passed in CM APPL. 33192/2023, the appeal and all pending applications stand disposed of.

PRATEEK JALAN, J

DECEMBER 7, 2023

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⁹ 2021 SCC OnLine Del 3976, para 15.