



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 946/2019 and CM APPL. 47727/2019**

Date of Decision: **16.08.2023**

IN THE MATTERS OF:

GOVT OF NCT OF DELHI
THROUGH
EXECUTIVE ENGINEER
PWD, DIVISION - V (DS)
CTI BUILDING, RAJA GARDEN,
NEW DELHI

..... PETITIONER NO.1

EXECUTIVE ENGINEER
HEALTH MAINTENANCE DIVISION,
(SOUTH WEST) M-123, DGER COMPLEX,
OPPOSITE DPS, SECTOR - 3, DWARKA,
NEW DELHI - 110078

..... PETITIONER NO.2

Through: Mr. Abhinav Sharma, Advocate.

Versus

M/S UNITED BUILDERS
THROUGH ITS DIRECTOR
UNITED HOUSE,
B - 24, COMMUNITY CENTRE,
B - 1, BLOCK, JANAKPURI,
NEW DELHI - 110058

.....RESPONDENT NO.1

THE MANAGING DIRECTOR,
M/S UNITED BUILDERS
UNITED HOUSE,

B - 24, COMMUNITY CENTRE,
B - 1, BLOCK, JANAKPURI,
NEW DELHI - 110058

.....RESPONDENT NO.2

Through: Ms.Divya Singh and Mr.Paritosh
Budhiraja, Advocates.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel appearing on behalf of the parties on CM APPL. 47727/2019, an application filed on behalf of the appellants seeking condonation of 528 days delay in filing the present appeal.
2. Learned counsel appearing on behalf of the appellants submits that the instant appeal is preferred against the impugned judgment and decree passed by the learned trial court dismissing the civil suit on 18.12.2017. The appellant is a large sized department with several divisions involving various stages of approval for filing of the appeal.
3. According to him, the process of obtaining legal opinion of the counsel could only be completed on 03.01.2019 and subsequent thereto, the case was transmitted to the counsel in April, 2019. Since, the brief was very bulky running into more than 3000 pages it took some time to prepare the appeal and the same was filed in the month of August, 2019.
4. Learned counsel appearing on behalf of the appellants, therefore, prays for condonation of delay while placing reliance on an order passed by the Hon'ble Supreme Court in the case of *'The State of Manipur & Ors. vs.*

KotingLamkang¹ wherein the court condoned 44 days delay on the ground that the reasons were satisfactorily explained.

5. Learned counsel appearing on behalf of the respondents by way of filing of the reply vehemently opposes the prayer made on behalf of the petitioner and she submits that the reasons are not supported by any document and there is no merit in the reasons explained by the appellants.

6. She has also places reliance on a decision of the Hon'ble Supreme Court in the case of '**The State of Madhya Pradesh & Ors. vs. Bherulal**'² wherein it was held that where there is inordinate and unexplained delay in filing the appeal, the Government or State authorities coming before the court must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible for causing the delay. She therefore prayed for dismissal of this appeal on the ground of the appeal being barred by limitation.

7. I have heard the submissions made by learned counsel appearing on behalf of the parties.

8. A perusal of the application seeking condonation of delay would show that there has been a delay of 528 days in filing the present appeal against the judgement and decree dated 18.12.2017.

9. To condone the delay of 528 days in filing the appeal, it is essential to consider the sufficient cause, nature of delay and whether under the present circumstance, such delay can be condoned based upon the arguments made by the appellant.

10. Condonation of delay finds its mention in Section 5 of the Limitation

¹ (2019)10 SCC 408

² (2020)10 SCC 654

Act, 1963, the same reads as under:-

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. — The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

11. The aforesaid provision emphasis upon the term ‘*sufficient cause*’ as a necessary condition for the extension of the prescribed period under the Limitation Act. It is, therefore, important for the litigants to point out the sufficient cause that occasioned the delay in filing the appeal.

12. The application for condonation of delay in filing the appeal reads as under-

‘Most respectfully sheweth;

1. That vide order dated 18.12.2017 the Hon'ble District Court, while deciding on the suite for recovery filed by the Petitioner herein had decided in favour of the Respondents herein and dismissed the suite no. 494 of 2003, however the impugned Judgment suffers from infirmities both in fact and law, hence the appeal.

2. That as Appellant Department, which was the concerned department and through which the entire proceedings were taking place is a huge department with a large number of divisions which are involved in the proceedings and the approval process, the approval for filing the appeal after receiving the legal opinion of the counsel in the main case could only be completed on 03.01.2019.

3. That subsequent to the approval, the case was transmitted to the present counsel in April 2019. The case at hand continued for more than 10 years and the brief was very bulky running into around 3000 pages and the process of obtaining the certified copies of the documents was also a time consuming task and could be completed only by end of May

2019 after the approval was received for the same from the department on 02.05.2019.

4. That after perusal of the lower court records in the present case, around 2000 pages were shortlisted for obtaining the certified copies. When the certified copies were obtained, they were only 800 pages, whereas the certified copies for 2000 pages had been applied for. Also, despite the fact that the requisite amount of Rs. 10,000 had been paid at the time of applying for the certified copies, the complete set of documents were not provided by the concerned copying agency.

5. That it was enquired from the copying agency as to why the rest of the 1200 pages were not provided to the applicant. The copying agency neither gave any satisfactory reply nor did it provide the rest of the documents, as a result of which the whole lower court record had to be inspected again for noting down the important contents, which further contributed to the unfortunate delay in filing of the present appeal.

6. That despite our best efforts, the perusal of the documents and preparing the appeal took time due to the sheer volume of the documents involved and the fact that they were not sequentially arranged.

7. That it is humbly submitted that there is a delay of 528 days in filing of the Appeal, which is neither intentional nor deliberate but for the reasons stated above.

PRAYER

In view of the above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

- 1. Condone the delay of 528 days in filing of the Appeal by the Appellant;*
- 2. Pass any other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case and in the interest of justice."*

13. In the instant case the appellant have not explained any sufficient reason as to why this matter had taken more than a year from the date of passing of the impugned judgment and decree till the legal opinion from the counsel is received. It is thus seen that the application filed by the appellant does not show sufficient cause in explaining as to why there was more than a year delay in filing the instant appeal.

14. The appellant in the instant case is a government department. The appellant-department did not furnish any acceptable explanation or plausible reason for such a long delay. It is thus, seen that appellant being a government department is also under an obligations to function with diligence and commitment.

15. It is a well settled principle that the Government is under a special obligation to perform duties with diligence and commitment. The condonation of delay is an exception which should not be used as per convenience of the Government Departments.

16. So far as the case of **KotingLamkang**(*supra*) is concerned, it relates to 44 days delay in moving before the wrong court was found to be satisfactorily explained in the impugned judgment. Paragraph no. 10 of the said judgement reads as under:

10. In the present matter, the delay to the extent of 44 days, in moving before the wrong court was found to be satisfactorily explained in the impugned judgment [State of Manipur v. KotingLamkang, 2017 SCC OnLine Mani 123] . As regards the failure of the State to adequately explain the remaining period of delay, our opinion is that the interest of justice would be better served, if the appellants' challenge to the decree of the trial court is allowed to be examined on merit, by the first appellate court. If the merit of the defendant's RFA is not permitted to be examined by the appellate court, the State will have no opportunity to address their grievances before a higher court. We may also observe that if consideration of the RFA is not permitted on strategically sensitive case involving security, in the ultimate analysis, the public interest is likely to suffer. The first appeal should therefore be considered on merit instead of the State being non-suited, on the ground of delay.

11. Therefore to avoid injustice to the State's interest and considering the special circumstances in the matter at issue, we deem it appropriate to exercise our jurisdiction under Article 136 of the Constitution of India and interfere with the impugned order [State of Manipur v. KotingLamkang, 2017 SCC OnLine Mani 123] of the High Court of Manipur. The delay in filing the first appeal is condoned. This shall however be subject to payment of costs of Rs 50,000 (Rupees fifty thousand) by the appellants in the High Court. In the result, the regular

first appeal preferred by the appellants is directed to be restored and considered on its own merits. Considering the rival contentions on possession being taken over/not taken over and the execution proceedings stated to have been concluded on 11-7-2018, the issue of possession and finalisation of the execution is made subject to the final decision of the High Court, in RFA No. 5 of 2017.

17. It is thus, seen that the case of **KotingLamkang**(supra) would not be of any assistance to the petitioner as the same relates to delay of 44 days wherein Hon'ble Supreme Court condoned the same by considering it appropriate to avoid injustice to the State's interest in view of it to be a special circumstance.

18. In the case of **Bherulal** (supra), it is held that a bar of limitation can shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

19. Paragraphs nos.5, 6 and 7 reads as under:-

"5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring

even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.”

20. A similar view has been taken by the Hon’ble Supreme Court in the case of ***University of Delhi vs. Union of India***³ and observed that the condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Paragraph no. 23 reads as under:-

“23. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the courts based on the fact situation.”

21. In ***Postmaster General vs. Living Media (India) Ltd.***⁴, the Hon’ble Supreme Court in paragraphs no. 28 and 29 held as under-

“28. 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 bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances,

³(2020) 13 SCC 745

⁴(2012) 3 SCC 563

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.

29. 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 bona fide 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 red tape 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

22. In any case, the reasons explained by the appellants are not adequate to constitute sufficient cause for condoning the delay of 528 days in filing the appeal.

23. Therefore, taking into consideration abovementioned facts and circumstances, this Court does not find any merit in the instant application as the appellant has failed to satisfy this Court that there exists sufficient cause for delay in filing the instant appeal.

24. In view of the same, this Court does not find cogent reasons to condone delay of 528 days in filing the instant application. The application is, therefore, rejected.

25. Accordingly, the instant appeal also stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 16, 2023

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