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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23.02.2023

+ **CRL.REV.P. 886/2018 & CrI.M.A.Nos.34030-31/2018**

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Mr. Ripu Daman Bhardwaj, SPP
with Mr. Abhinav Bhardwaj,
Advocates.

versus

K K GUPTA & ORS. Respondents

Through: Mr. Ram Kishan, Advocate.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.(ORAL)

1. This order will decide the application filed by the petitioner under Section 5 of Limitation Act, 1908 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking condonation of delay in filing the present petition.

2. The present petition has been filed against order dated 15.02.2018 passed by learned Special Judge (P.C. Act) CBI, East District, Karkardooma Courts, Delhi. It is stated on behalf of petitioner i.e. Central Bureau of Investigation (CBI) that there has been a delay of 119 days in filing the present petition since the case file had to pass through several departments for compliance of statutory requirements resulting

into delay of 119 days. It is stated that the delay is neither deliberate nor intentional and, therefore, the same be condoned.

3. Learned SPP for CBI has placed reliance upon the decision of Hon'ble Apex Court in ***Collector Land Acquisition v. Katiji 1987 (2) SCC 107*** to contend that refusal to condone the delay can result in meritorious matter being defeated. Further reliance is placed upon the decision of Hon'ble Supreme Court of India in ***State of Nagaland v. Lipok to AO 2005 (3) SCC 752*** to argue that sufficient cause should be considered with pragmatism in a justice oriented approach rather than a technical defection of sufficient causes for explaining every days' delay, especially when the appeals are filed by State machinery.

4. Learned counsel for the respondent, on the other hand, states that the delay be not condoned and the petition be dismissed at the outset for delay which was intentional and malafide. It is stated that the present petition has been filed to harass the respondent. It is stated that the petitioner was to explain delay of each day which has not been done in the present case and, therefore, the same be dismissed. Attention of this Court in this regard has also been drawn to the case of ***State of Madhya Pradesh & Ors. v. Bherulal (2020) 10 SCC 654*** to argue that there is no need to accept that file was kept pending for several months or years without there being any explanation for the same.

5. Learned counsel for the petitioner has drawn attention of this Court to para 5 of the present application for condonation of delay, wherein the period of delay and the reasons thereof have been explained. The same reads as under:

No.	Details	Dates
1.	Impugned order	15.02.2018
2.	Certified copy of impugned order applied	16.02.2018
3.	Certified copy received	28.02.2018
4.	Case processed in branch office	15.06.2018
5.	DOP approved recommending filing of of appeal	21.07.2018
6.	Instruction given to present counsel for filing appeal	08.08.2018
7.	Draft Revision prepared and submitted to the office for approval	11.08.2018
8.	Approval of filing obtained	24.09.2018

6. A perusal of the same reveals that after receipt of the certified copy of the impugned order on 28.02.2018, and after excluding the period of limitation as per law, the total period of delay in filing present petition is 119 days.

7. This Court has heard the arguments of learned counsels for both the parties.

8. The law regarding limitation and condonation of delay has been dealt with under Section 5 and 12 of Limitation Act, 1963 which are reproduced 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 missed 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.”

“12. Exclusion of time in legal proceedings.—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”

9. A three-judge bench of Hon'ble Apex Court in *University of Delhi v. Union of India & Ors. Civil Appeal Nos. 9488-9489/2019*, while discussing several precedents, summed up the law on condonation of delay as under:

20. 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. In the case of Katiji (Supra) the entire conspectus relating to condonation of delay has been kept in focus.

(Emphasis supplied)

10. In *Hemlata Verma v. M/s ICICI Prudential Life Insurance Co. Ltd. & Anr. Civil Appeal No.5131/2019*, the Hon'ble Supreme Court, while setting aside an order of National Consumer Disputes Redressal Commission whereby the Commission had refused to condone delay of 207 days, had observed that a liberal approach should have been adopted while dealing with condonation of delay.

11. After hearing arguments of both the sides perusing the material on record, it is observed that the delay in filing present petition was caused on account of some time taken for obtaining necessary approvals from various departments in filing the present petition. The delay in the present case is of 119 days. Being guided by several decisions of the Hon'ble Apex Court, as discussed in preceding paras, this Court is of the opinion that doors to availing appropriate remedy by the petitioner cannot be closed at the threshold on such a ground. As far as contentions on behalf of respondent are concerned, the Hon'ble Apex Court even in *State of Madhya Pradesh & Ors. v. Bhurelal (supra)* had expressed that reasonable and acceptable explanation and bona fide efforts must be shown to justify the delay in filing of appeals. This Court cannot also lose sight of the fact that the said case was dealing with a situation where the delay in filing of appeal was 663 days, as against 119 days in present case.

12. Undoubtedly, the petitioner should have taken care that the approvals were granted expeditiously keeping in mind the prescribed mandatory period of filing revision petition and a slack approach should not have been adopted. The petitioner i.e. Central Bureau of Investigation must also look into its own working to ensure that the law department itself is aware of the legal position and the law of limitation, and department should not, as a matter of right, adopt a slack approach and cause delay in filing petitions and appeals. There cannot be discrimination or different standards for the purpose of considering "sufficient cause" in relation to the Government Departments, Corporate bodies and Private individuals.

13. Be that as it may, at the same time, this Court is also conscious of several judgments of the Hon'ble Apex Court which have time and again reiterated that a pragmatic approach has to be adopted for condonation of delay, and that delay can be condoned if the same is sufficiently explained by stating reasons thereof.

14. Considering the aforesaid, and also keeping in mind the fact that in case the application is not allowed, it will cause prejudice to the petitioner, and its right to impugn the order will be throttled at the threshold, this Court is inclined to condone the delay in filing present petition.

15. Accordingly, the present application stands allowed.

SWARANA KANTA SHARMA, J

FEBRUARY 23, 2023/ns

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