

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT 869 of 2024

With

CAN 1 of 2024

With

CAN 2 of 2024

The State of West Bengal & Ors.

-Versus-

Priya Halder & Ors.

For the Appellants : **Mr. Sommnath Ganguly,
Mr. Tapas Kr. Dey**

For the Respondent No. 1 : **Mr. Santanu Chatterjee,
Mr. Rajendra Kr. Nandi**

For the Respondent Nos. 2-5 : **Mr. Subhrangsu Panda,
Ms. Mithu Singha Mahapatra,
Ms. Ina Bhattacharyya.**

Hearing Concluded on : **17.09.2024**

Delivered on : **20.09.2024**

Prasenjit Biswas, J:-

In Re: CAN 1 of 2024

1. This is an application filed at the behest of the appellants/petitioners seeking for condonation of delay in preferring the instant appeal challenging the order dated 13.07.2023 passed by the learned Single Bench of this Court in connection with WPA 18757 of 2022. As per report submitted by the Additional Stamp Reporter there is a delay of 284 days in preferring this appeal.

2. It is stated by the petitioner that they received the order from their learned Advocates on 31.08.2023 and immediately thereafter they sought instruction from the concerned department that what course of action is to be taken to the said impugned order. The department decided to prefer appeal against the said impugned order dated 23.11.2023 and the same was finalized on 20.12.2023 by engaging learned Advocate. As per request of the department the learned Advocate on record applied to obtain a certified copy of the impugned order. It is stated by the petitioners that the learned Advocate although applied for getting certified copy of the order but somehow it was misplaced and went out of his mind. When the department gave a reminder to the learned Advocate for filing appeal against the impugned order then it has come to its knowledge from the learned Advocate that the counterparts of application for getting certified copy of the order has been lost. It is further stated by the petitioners that in the mean time a contempt application was taken out by the writ petitioner and as

such a fresh application was made on 10.04.2024 for getting the certified copy of the order and ultimately on 22.04.2024 certified copy of the impugned order was obtained by the petitioners. Thereafter proposal for preferring appeal against the impugned order was approved by the authority concerned and the learned Advocate on record was requested to prepare the memo of appeal. Thereafter learned Advocate prepared a draft memo of appeal which was ultimately settled with the learned Senior Advocate and sent to the department for its approval. The learned Advocate got it back from the department concerned on 16.04.2024 and final approval was received by the learned Advocate on 30.04.2024 with a request by the department for filing the appeal and connected application. As such the appeal was filed challenging the said impugned order passed by the learned Single Bench along with an application with a prayer for condonation of delay in preferring the same.

3. We have anxiously considered the submissions advanced by both the parties. Perused the grounds as stated by the appellants in the application for condonation of delay filed under Section 5 of the Limitation Act.

4. The general principle underlying the condonation of delay is that courts have discretionary power to extend the time limit in cases where the delay was due to genuine and valid reasons. The courts examine each case on its merits and consider factors such as the explanation for the delay, the sufficiency of the cause shown, the absence of negligence, and the potential prejudice caused to the other party. The term “sufficient cause” is not defined explicitly and varies on a case-to-case basis. The Court has a wide discretion in determining what constitutes as sufficient cause, depending upon the facts and circumstances of each case.

5. Can a mere narration of facts showing the slow-paced manner in which the files move from one table to another in an administrative set-up be considered a sufficient

explanation for breaching the limitation? Is it fair to take away a very valid ground for a counter-attack on the part of the private respondent merely because the state can provide an 'explanation' of how it may have caused an inordinate delay in making a filing? An 'explanation' is when all of the facts and layout of the cause are provided which helps to clarify the circumstances of a particular event to point out that something has happened due to no fault of the person seeking condonation. Insofar as the question as to condonation of delay by resorting to Section 5 of the Limitation Act is concerned, delay can be condoned if 'sufficient cause' is shown and the approach of the courts should be liberal guided by legal principles. At the same time, dilatory tactics, if borne out from materials, shall be treated sternly and liberal approach cannot be extended to those persons.

6. It appears from the application filed by the petitioner that the department concerned decided to prefer the appeal challenging the impugned order on 23.11.2023 and as such advocate was engaged to prefer appeal on 20.12.2023. The application was taken out for getting the certified copy of the impugned order dated 13.07.2023 and after that as it was found misplaced and went out of their mind, they again filed the application for obtaining certified copy of the same on 10.04.2024. There is no such plausible explanation of delay by the petitioners from the date i.e. 23.11.2023, when the department decided to prefer appeal and to the date when ultimately they obtained the certified copy of the order. The explanation so offered by the present applicants/appellants to demonstrate sufficient cause was delayed filing of the appeal which is to our opinion is not explanation in the eye of law rather it is an excuse. The appellants could not decide whether they had to challenge the impugned order or not despite they were fully aware of the prescribed period of limitation. It appears from their statement made in the petition that they had miserably failed to demonstrate

that they were diligence and bona-fide to make out sufficient cause for condoning the delay. So, in our opinion that delay in filing the appeal has not been sufficiently explained and there exists no sufficient cause for condoning the delay in filing the aforesaid appeal. We are unable to understand from the statements as made out in the petition that what prevented the appellants/petitioners to file this present appeal within the stipulated period of time as enshrined in the Act.

7. The State is to be treated at par with any other litigant and no special favour is to be bestowed on them while considering their petition for condonation of delay merely by virtue of the fact that they are the Government. The State Government as any other litigant is to explain what “sufficient cause” prompted them to require the indulgence of the Court to condone the delay, by exercising its discretion. The Court is also to consider if there was gross negligence, deliberate inaction, or lack of bona fides on the part of the litigant or its Counsel, each case would have to be considered on the peculiarity of its own facts

8. We are of the view that the discretionary power is only to be exercised when sufficient cause is made out and compelling reasons are provided for condonation of delay. In our opinion, the period of delay has not at all been accounted for and no sufficient cause has been made out for executing the delay in filing the appeal. There is no doubt that whether it is a department of the government or a private party, the provisions of law applicable are the same unless the statute itself makes any distinction. We are of the opinion that in the present case the appellant is guilty of such inaction or negligence as would deprive it of the protection of Section 5 of the Limitation Act. In the present case, one does not find any such reason provided which would enable this Court to condone the delay. In fact, it is crystal clear that the appellants have acted in a lackadaisical manner and filed this appeal belatedly.

9. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge. What colour the expression “sufficient cause’ would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

10. We find that sufficient time is taken in the decision-making process by the State. No premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the statement as made in the application.

11. It is apparent from the record of the case that in the instant case, there is huge delay of 284 days in filing the present appeal and no sufficient cause for such huge delay, supported by relevant documents, has been established. In this case, it is difficult to fathom any logic or rationale which can impel this court to condone the delay after holding the same to be justifiable. Therefore, in the considered opinion of this Court, such huge delay cannot be condoned.

12. Hence, the application filed by the appellants/State under Section 5 of the Limitation Act being CAN 1 of 2024 is dismissed. Resultantly, the appeal filed by the appellants is also dismissed as time barred.

13. There will be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)