

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WPLRT 92 of 2024

With

IA No.: CAN 1 of 2024

The State of West Bengal & Ors.

Vs.

Rototron Containers Private Limited and Ors.

With

WPLRT 129 of 2024

Rototron Containers Private Limited

Vs.

**Land Reforms Commissioner & Secretary, Department of Land &
Land Reforms & Refugee Relief and Rehabilitation and Ors.**

For the State in
WPLRT 92 of 2024

:Mr. T.M. Siddique, Ld. AGP
Mr. Mrinal Kanti Ghosh, Advocate

For the respondent no.3
in WPLRT 92 of 2024 and
for the respondent no.5 in
WPLRT 129 of 2024
[Birds Jute and Exports Limited]

: Mr. Supratim Dhar, Advocate
Mr. Arik Banerjee, Advocate
Mr. Debabrata Das, Advocate
Mr. Saptarshi Mukherjee, Advocate
Mr. Anil Dhar, Advocate
Mr. Tirthankar Nandi, Advocate

For the State in
WPLRT 129 of 2024

:Sk. Md. Galib, Advocate
Mr. Kapil Guha, Advocate

For the petitioner :Mr. Anindya Kr. Mitra, Ld. Sr. Advocate
 [Rototron Containers Private Limited]Mr. Abhrajit Mitra, Ld. Sr. Advocate
 in WPLRT 129 of 2024 Mr. Soumya Roy Chowdhury, Advocate
 Mr. Satadeep Bhattacharyya, Advocate
 Mr. Awani Kumar Roy, Advocate
 Ms. Susrea Mitra, Advocate
 Ms. Sriparna Mitra, Advocate
 Mr. Surajit Biswas, Advocate
 Mr. Arijit Bera, Advocate.

Heard & Judgment on : September 18, 2024

DEBANGSU BASAK, J.:-

1. Two writ petitions are taken up for consideration analogously as they originate from proceedings between the same parties and it relates to the same land.
2. WPLRT 92 of 2024 is at the behest of the State and its functionaries and directed against an order refusing to grant interim relief in the original application of the Birds Jute and Exports Limited in O.A. No.1237 of 2024.
3. WPLRT 129 of 2024 is at the behest of the private persons (Rototron Containers Private Limited) who claims right, title and interest in respect of the land in question.
4. Rototron Containers Private Limited is aggrieved by the order dated August 14, 2024 passed by the West Bengal Land Reforms and Tenancy

Tribunal in M.A. No.547 of 2024 condoning a delay of 626 days in making and filing O.A. No.1237 of 2024 (LRTT).

5. As a matter of convenience, we requested learned Senior Advocate appearing for Rototron Containers Private Limited to address the Court first.
6. Learned Senior Advocate appearing for the Rototron Containers Private Limited submits that, O.A. No.1237 of 2024 was filed at the behest of the State and its functionaries belatedly. There is a delay of 626 days in making and filing the original application. Such delay was not sufficiently explained in the application for condonation of delay. He refers to the application for condonation of delay. He submits that, there is no prayer for condonation of delay. In any event, he submits that, sufficient cause was not shown in such application. He refers to the averments made in such application. He submits that, the State and its functionaries did not explain any incident occurring within the statutory prescribed period of 60 days in making and filing the original application before the Tribunal, which prevented the State and its functionaries from filing the original application within time.
7. Learned Senior Advocate appearing for the Rototron Containers Private Limited relies upon **(2008) 17 Supreme Court Cases 448 (Pundlik Jalam Patil (Dead) by LRS, vs. Executive Engineer, Jalgaon Medium Project and Another), (2014) 11 Supreme Court Cases 351 (Brijesh Kumar and Others vs. State of Haryana and Others)** and **2024 SCC**

OnLine SC 513 (Pathapati Subba Reddy (Died) By L.Rs. and Others vs. Special Deputy Collector (LA)) in support of his contention that, sufficient cause must exist within the prescribed period of limitation and that, such cause need be explained. Moreover, the merit of the case is of no consequence while considering an application for condonation of delay.

8. Relying upon **(2020)10 Supreme Court Cases 654 (The State of Madhya Pradesh and Ors. Vs. Bherulal)** and **(2021) 6 Supreme Court Cases 460 (Government of Maharashtra (Water Resources Department) represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private Limited)**, learned Senior Advocate appearing for the Rototron Containers Private Limited submits that, Government is not a favoured litigant.
9. Learned Advocate appearing for the State submits that, the delay was of 626 days. He refers to the merits of the case. He submits that, Rototron Containers Private Limited was claiming independent right, title and interest in respect of the land in question through another private party, which such private party recorded its name in the record of rights, illegally. Birds Jute and Exports Limited is claiming rights through the State. Since the State's right is being questioned by Rototron Containers Private Limited, State thought it prudent to prefer an independent appeal. He submits that, the order under challenge in the Tribunal was passed without jurisdiction and without hearing the State.

10. Learned Advocate appearing for the State draws the attention of the Court to the application under Section 5 of the Limitation Act, 1963. According to him, the delay was adequately explained. Moreover, he refers to the impugned order of the Tribunal and submits that, both the learned Members of the Tribunal considered the aspects of the condonation of delay. The Tribunal exercised its discretion and gave reasons for exercising of such discretion. Such exercise of discretion cannot be said to be perverse. He relies upon **(2023)10 Supreme Court Cases 531 (Sheo Raj Singh (Deceased) Through Legal Representatives and Others vs. Union of India and Another)** for the proposition that, merit of the case can be considered and that, when a discretion was exercised by a Tribunal while considering an application under Section 5 of the Limitation Act, 1963, such discretion should not be interfered with unless the Court is of the view that the same is perverse.
11. Learned Advocate appearing for the State relies upon two unreported decisions of the Coordinate Benches, namely, order dated **February 26, 2024** passed in **M.A.T. 1594 of 2023** and the judgment and order dated **May 20, 2024** passed in **MAT No.2401 of 2023** where Co-ordinate Benches condoned the delay. He submits that, delay can be condoned by the Tribunal and that, cogent grounds appear from the impugned order of the Tribunal.

12. Learned Advocate appearing for the Birds Jute and Exports Limited submits that, the Tribunal correctly condoned the delay.
13. WPLRT 92 of 2024 is at the behest of the State and its functionaries and directed against an order dated February 29, 2024 passed by the West Bengal Land Reforms and Tenancy Tribunal in M.A. No.1269 of 2023 (OA-2210 of 2022) (LRTT). By such order, the Tribunal refused to grant interim protection to the original applicant being Birds Jute and Exports Limited in OA-2210 of 2022.
14. State filed O.A. No.1237 of 2024 assailing the order of the Settlement Officer dated June 10, 2022 passed in Appeal Case No.204 of 2019. In such O.A. No.1237 of 2024 both Rototron Containers Private Limited and Birds Jute and Exports Limited are parties.
15. Order dated June 10, 2022 passed in Appeal Case No.204 of 2019 by the Settlement Officer is also under challenge at the behest of the Birds Jute and Exports Limited in OA-2210 of 2022. In OA-2210 of 2022, State and Rototron Containers Private Limited are party respondents.
16. In both the proceedings, therefore, order of the Settlement Officer dated June 10, 2022 passed in Appeal Case No.204 of 2019 is under challenge. In both the OAs, the same parties are present.
17. OA-2210 of 2022 is ready for final hearing. We are informed that, the next date of hearing is on December 2, 2024.
18. OA-2210 of 2022 was taken up for hearing on February 29, 2024 when State and its functionaries thought it prudent that, they need to

challenge the order of the Settlement Officer dated June 10, 2022 passed in Appeal Case No.204 of 2019. Consequently, they preferred the original application being O.A. No.1237 of 2024 with a delay of 626 days. They applied by way of MA 547 of 2024 for condonation of delay of 626 days in making and filing the original application. Such application was considered and decided by the impugned order dated August 14, 2024.

19. On the issue of condonation of delay under Section 5 of the Limitation Act, 1963, parties cited before us several authorities.
20. In ***Pundlik Jalam Patil (Dead) By LRS.*** (supra), Supreme Court observed that, although power to condone the delay rests with the Court in which the application for condonation was filed, discretion in allowing such application is not to be readily interfered with even if there is some error found in exercise of such discretion. However, where sufficient cause for condoning the delay did not exist but the delay was condoned, in such a case, the discretion exercised becomes vulnerable and susceptible for correction by the Superior Court.
21. ***Sheo Raj Singh (Deceased) Through Legal Representatives and Others*** (supra) is of the view that, merits of the claim can be taken into consideration while deciding an application for condonation of delay.
22. ***Brijesh Kumar and Others*** (supra) is of the view that, there is a distinction between delay and inordinate delay for want of *bona fides* or an inaction or a negligence. It is also of the view that existence of

sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay.

23. ***Pathapati Subba Reddy (Died) By L.Rs. and Others*** (supra) is of the view that, although, Courts should adopt a very liberal approach in construing the clause ‘sufficient cause’ used in Section 5 of the Limitation Act, 1963, existence of ‘sufficient cause’ is the condition precedent for exercising of discretionary power to condone the delay. It is also of the view that, the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.
24. It would be appropriate to refer to the summary of the law on condonation of delay as stated in paragraph 26 of ***Pathapati Subba Reddy (Died) By L.Rs. and Others*** (supra) which is as follows:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;***
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;***
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;***

- (iv) *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) *Merits of the case are not required to be considered in condoning the delay; and*
- (viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

25. ***Borse Brothers Engineers and Contractors Private Limited*** (supra) is of the view that merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. Hon’ble Supreme Court expressed similar view in ***Bherulal*** (supra).

26. The two Coordinate Benches in ***Nityananda Mondal & Others*** (supra) and ***Siraj Lutfar Rahaman*** (supra) condoned various quantum of delay in preferring appeals before the High Court. The decisions of both the Coordinate Benches are by Courts who received the application for condonation of delay.
27. In the facts of the present case, an order of exercise of discretion under Section 5 of the Limitation, 1963 is under challenge before us. Parameters for consideration are different as noted in ***Sheo Raj Singh (Deceased) Through Legal Representatives and Others*** (supra). We are to consider whether the Tribunal exercised the discretion properly in condoning the delay or not.
28. As noted above, State and its functionaries applied for condonation of delay by way of MA 547 of 2024 in O.A. No.1237 of 2024.
29. Paragraph 28 of such application contains a prayer for condonation of 626 days delay. The prayer portion in the application is not a traditional prayer which one finds in an application. The prayer is made the last paragraph in the application itself. We are not in a position, given the fact that paragraph 28 contained a prayer for condonation of delay, to arrive at a finding that, there was no prayer for condonation of delay made.
30. The application for condonation of delay seeks to justify the delay on the ground that, State and its functionaries held a conference with the learned Advocate for the State after the order dated February 29, 2024

passed in OA-2210 of 2022 wherein, Tribunal dismissed the application for injunction filed by Birds Jute and Exports Limited. According to the State and its functionaries, need to assail the order dated June 10, 2022 passed by the Settlement Officer in Appeal Case No.204 of 2019 was felt subsequent to the order dated February 29, 2024 of the Tribunal. It is, thereafter, steps were taken by the State and its functionaries to file O.A. No.1237 of 2024 to assail the order dated June 10, 2022 passed by the Settlement Officer in Appeal Case No.204 of 2019.

31. State and its functionaries are parties in OA-2210 of 2022 where the order dated June 10, 2022 passed by the Settlement Officer in Appeal Case No.204 of 2019 is also under challenge. State and its functionaries are required to make out a sufficient cause in its application for condonation of delay. 'Sufficient cause' are the words used in Section 5 of the Limitation Act, 1963. Authorities cited at the Bar and as noted above, are of the view that, sufficient cause is to be liberally construed. However, such liberal construction should not be stretched to the extent of stating that where, no cause is shown then also, the application for condonation of delay is required to be allowed. Authorities noted above, also states that, State Government should not receive a different treatment than any other litigation so far as the application for condonation of delay is concerned.

32. Keeping such proposition of law in mind, we find that, State and its functionaries sought to explain the delay as averred in paragraph 25 by

way of the application for condonation of delay. Primarily the ground advanced is that, they need to prefer an original application directed against the same order dated June 10, 2022 passed by the Settlement Officer in Appeal Case No.204 of 2019 which is under challenge in OA-2210 of 2022 was filed subsequent to the order dated February 29, 2024 passed in OA-2210 of 2022. Such ground cannot be brushed aside as being no ground at all. In any event, Tribunal exercised its discretion vested upon it in law in accepting such ground as sufficient.

33. Apparently, State and its functionaries labored under one impression with regard to the order dated June 10, 2022 passed by the Settlement Officer in OA-2210 of 2022 and is challenged by the State, in view of the existing challenge, which such impression changed in February 29, 2024.
34. In exercising its discretion, Tribunal took the pains in giving reasons as to why it was accepting such ground as sufficient. Both the Members passed independent orders. Both, however, concurred with the finding that, the delay needs to be condoned and that there was sufficient ground made out for the same.
35. On perusal of the order impugned before us, we are not in a position to arrive at a finding that the discretion exercised by the Tribunal is perverse.
36. In such circumstances, we find no merit in WPLRT 129 of 2024.
37. **WPLRT 129 of 2024** is dismissed without any order as to costs.

38. So far as WPLRT 92 of 2024 is concerned, the same is at the behest of the State and its functionaries being aggrieved by the decision of the Tribunal in not granting interim relief as prayed for by Birds Jute and Exports Limited. Tribunal gave cogent reasons in the impugned order as to why it was not granting interim relief to Birds Jute and Exports Limited.
39. We are informed that the OA-2210 of 2022 is fixed for final hearing on December 2, 2024. O.A. No.1237 of 2024 is also fixed on December 2, 2024. However, pleadings in O.A. No.1237 of 2024 are not complete. It would, therefore, be appropriate that the parties to be granted one opportunity to file pleadings in O.A. No.1237 of 2024.
40. OA-2210 of 2022 as well as O.A. No.1237 of 2024 as such that, an expeditious disposal of both the original applications is in the interest of justice. Therefore, it would be appropriate to ensure that both the original applications are heard and decided as expeditiously as possible.
41. Pleadings in O.A. No.1237 of 2024 is not complete. Therefore, respondents in O.A. No.1237 of 2024 will file affidavit-in-opposition within November 8, 2024. Reply thereto, if any, be filed by November 21, 2024.
42. Learned Tribunal is requested to take up OA-2210 of 2022 as well as O.A. No.1237 of 2024 for final hearing on and from November 25, 2024.
43. Learned Tribunal is requested to take up hearing of both the applications on a day-to-day basis commencing from November 25, 2024. Learned

Tribunal is requested not to grant any unnecessary adjournments to any of the parties.

44. **WPLRT 92 of 2024** along with **IA No.: CAN 1 of 2024** are also disposed of accordingly but without any order as to costs.

(Debangsu Basak, J.)

45. I agree.

(Md. Shabbar Rashidi, J.)

(AD)