



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

L APPLICATION NO.3671/2023 IN FIRST APPEAL ST. NO.18738/2023
VIDC thr. Executive Engineer, Project Division, Nagpur .Vs. Shrawan Parasram
Baraskar and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. U. A. Patil, Advocate for applicant.
Ms A. V. Pande, Advocate for non applicant no.1.
Mrs. D. I. Charlewar, A.G.P for non applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : 14.03.2024

Applicant-Vidarbha Irrigation Development Corporation (VIDC) has filed the present application under Section 5 of the Limitation Act, 1963 seeking to condone the delay of 313 days in filing appeal against the judgment and award dated 22.07.2022 passed by Civil Judge Senior Division, Nagpur in Land Acquisition Case No.333/2008.

2. The delay has been explained in the following terms.

“3. It is submitted that the appellant has applied for certified copy on 15.09.2022 which is received on 14.10.2022.

4. It is submitted that the learned counsel appearing for applicant before the learned reference court has informed the authorities about enhancement of compensation vide letter dated 16.10.2022. Thereafter the opinion is sought by the authorities and matter is placed before the standing counsel of the appellant and on 09.11.2022 the matter was allotted to the present counsel. The present counsel has informed about the court fees to the office of the appellant vide letter dated 16.11.2022. The office of the appellant applied for

sanction of court fees as well as enhanced compensation. The office has applied earlier after receiving the calculations from the present counsel for the court fees as well as the compensation with calculation upto January, 2023 but since the amount is not received the second proposal was submitted calculating the compensation upto July, 2023. The said amount is received by the office of appellant in the month of August, 2023. The present counsel has received the court fees vide letter dated 25.08.2023 and immediately thereafter the present appeal is filed. Hence there is a delay in filing the appeal of 313 Days. The delay is not intentional and deliberate. The time is required to get certified copies, to get the sanction for the court fees etc. Hence the delay may kindly be condoned, in the interest of justice.”

3. As could be seen, the judgment and award has been passed on 22.07.2022, the appellant has applied for certified copy on 15.09.2022. No reason has been assigned as to what prevented the applicant from filing application for certified copy of the judgment and award immediately after pronouncement of judgment. The applicant has then taken one month's time to seek opinion, which could have been easily curtailed. Further time of about 8 months has been taken to make arrangements for court fees. The pleadings in paragraph 4 of the application indicate that the delay caused in seeking opinion and procuring court fee has put an additional burden of interest upon the public exchequers.
4. The justification, as put-forth, is far from acceptable norms. It is well settled that the applicant need not explain delay of each day, at the same time, the applicant, under the

garb of 'liberal approach', cannot make request, which would defeat the purpose of the Limitation Act for he is bound by law of limitation, and therefore, is duty bound to show sufficient cause for not filing Appeal in time. The Hon'ble Supreme Court in the case of **State of Madhya Pradesh And Others V/s Bherulal, (2020) 10 SCC 654** has held that law of limitation undoubtedly binds everybody including the Government and deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies.

5. The effect of delay has been explained by the Supreme Court in the case of **Ramlal V/s Rewa Coalfields Ltd. AIR 1962 SC 361**. The Supreme Court, while interpreting Section 5 of the Limitation Act held thus:

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed.”

6. Thus, the absence of sufficient cause, legal right which has accrued in favour of the decree-holder by lapse of time should not be lightheartedly disturbed.

7. So far as time consumed in procuring Court Fee is concerned, the Supreme Court in the case of **Ajay Dabra Vs. Pyare Ram and ors., 2023 SCC Online SC 92**, while dealing with ground of being short of funds to pay the Court Fee to condone the delay, has referred to Section 149 of the Civil Procedure Code, 1908, which refers to power to make up deficiency of court fee and held thus:

“6. It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870. In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to the incorporation of Section 149 in CPC would explain this aspect.

9. In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima wherein it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured.....

10.

11. We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the

appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done."

(emphasis now)

8. Thus, the Supreme Court has held that the appellants could have filed the appeal deficient in court fee and made good subsequently. Nothing prevented the applicant herein from adopting such a mode. Applicant is equipped with panel of advocates who ought to be aware of the scope of Section 149 of the Code. Thus, justification for delay on account of court fee is not acceptable.

9. The counsel for the applicant submits that the applicant has deposited earlier compensation amount. Accordingly, he makes a request to condone the delay. The request cannot be considered. Firstly, the amount of compensation is deposited as a condition to stay the effect and operation of the impugned order pending application seeking condonation of delay. Secondly, if sufficient cause is not shown to condone the delay then to condone delay on such ground will be contrary to what has been provided under Section 5 of the Limitation Act.

10. On this point of condoning delay by imposing condition, the Supreme Court in the case of ***Basawaraj and anr. Vs. The Spl. Land Acquisition Officer, AIR 2014 SC 746***, held as under:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

11. Thus, the Supreme Court has held that in case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, imposing any condition whatsoever, amounts to passing an order in violation of the statutory provision and it tantamounts to showing utter disregard to the legislature. The applicant herein failed to show sufficient cause and, therefore, to condone delay on the ground of depositing

compensation will amount to passing order in violation of the statutory provision.

12. Further, the reason of administrative difficulty will have to be dealt with in terms of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short, 'the Act of 2005'), which reads thus:

"10. (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible:

Provided that, normally no file shall remain pending with any Government servant in the Department or Office for more than seven working days:

Provided further that, immediate and urgent files shall be disposed of as per the urgency of the matter, as expeditiously as possible, and preferably the immediate file in one day or next day morning and the urgent file in four days:

Provided also that, in respect of the files not required to be referred to any other Department, the concerned Department shall take the decision and necessary action in the matter within forty-five days and in respect of files required to be referred to any other Department, decision and necessary action shall be taken within three months.

(2) Any willful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate 1. [disciplinary action under the All India Services

(Discipline and Appeal) Rules, 1969, the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

(3) The concerned competent authority on noticing or being brought to its notice any such dereliction of duties on the part of any Government servant, after satisfying itself about such dereliction on the part of such Government servant shall, take appropriate disciplinary action against such defaulting Government servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Government servant.”

13. As could be seen, sub-section (1) of Section 10 of the Act of 2005 provides that every Government servant shall discharge his official duties assigned or pertaining to him most diligently and expeditiously and that no file shall remain pending with any Government servant in the department, usually for more than seven working days. Thus, additional time taken will have to be properly justified. In addition, Rules 10 to 13 of the Maharashtra Prevention of Delay in Discharge of Official Duties Rules, 2013 (for short “the Rules of 2013) provides for detailed mechanism to prevent/avoid delay. Despite such a provision and several judgments of the Supreme Court deprecating casual approach in processing files, there is no improvement.

14. There is a reason for the same and the reason is not taking action, provided under sub-sections (2) and (3) of Section 10. It is unfortunate that the effect of sub-section (1) of Section 10 has been neutralized by not taking recourse to

sub-sections (2) and (3) of Section 10. Resultantly, the casual approach of Government servants continue.

15. Considering the Judgment cited above and the provisions of the Act of 2005 and Rules of 2013, vis a vis justification given by the applicant in paragraph Nos.3 and 4 of the application, in my considered view, the applicant has miserably failed to show any cause, muchless sufficient cause, to condone the delay.

The application is, therefore, rejected.

16. Copy of order be forwarded to Chief Engineer, Water Resources Department, Nagpur of VIDC for taking action in terms of sub-section (2) and (3) of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, of course, after giving an opportunity of hearing to concerned officials.

CIVIL APPLICATION NO.864/2024

At this stage, learned Counsel for the non applicant no.1 submits that he has filed application seeking permission to withdraw the amount of compensation deposited by the applicant in terms of order dated 08.12.2023 passed by this Court while granting stay to the execution of the judgment and award. The stay was granted pending application seeking condonation of delay. The application has been rejected, and therefore, there is no reason why should not the non applicant No.1 get fruits of the award.

2. The learned counsel for the applicant has objected to release the amount on the ground that the applicant may challenge the order passed by this court. She has accordingly made a request to stay the effect and operation of the order for twelve weeks.

3. I am not inclined to stay. The order rejecting application for condonation of delay will have no bearing on the merits of the case. The appeal is not even registered, as cannot be until delay is condoned. Nonetheless, considering the request so made, it will be appropriate to permit the non applicant no.1 to withdraw 50% of the amount of compensation deposited by the appellant on filing an undertaking that the said amount shall be redeposited with interest at such rate the court may direct, if the applicant succeeds in its challenge. Further 50% of the compensation amount is permitted to be withdrawn on furnishing a solvent surety to the satisfaction of the Registrar (Judicial).

4. Civil application stands disposed of accordingly.

(Anil L. Pansare, J.)