



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Reserved on : 09.09.2024
CWP-15606-2024 (O&M)
Pronounced on : 17.09.2024**

Punjab State Federation of Cooperative House Building Societies Ltd.

...Petitioner

VERSUS

National Consumer Disputes Redressal Commission and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Rajesh Punj, Advocate for the petitioner.

VINOD S. BHARDWAJ, J.

1. Challenge in the present petition is to the order dated 05.02.2024, whereby the National Consumer Disputes Redressal Commission has allowed the Appeal preferred by Respondent no. 2 without formally adjudicating on the application seeking Condonation of delay, preferred by the said respondents, in filing of the appeal.

Facts of the Case:-

2. Petitioner Co-operative society was allotted two parcels of land measuring 5.50 acres and 5.49 acres respectively by the Punjab Urban Planning and Development Authority (hereinafter referred as PUDA) vide Memo No. 5076 dated 11.03.2003 (**Annexure P-2**).

3. Petitioner Co-operative society framed a Scheme for allotments of flat on the above said allotted land situated in Sector 79, SAS Nagar for which Booking was opened on 31.01.2004 and was closed on



23.02.2004 (**Annexure P-3**). Respondent No. 2 applied for allotment of flat vide application dated 20.02.2004 and was issued Letter of Allotment on 24.03.2004 (**Annexure P-4**).

4. Due to a Stay order passed by this court against PUDA, it could not deliver the possession of the land agreed upon with the petitioner Co-operative Society and therefore the Board of Directors of the petitioner co-operative society passed a resolution dated 19.05.2006 giving option to the allottees to either seek refund of the earnest money deposited by them alongwith 10% interest or send their consent regarding retaining of allotted flats at the enhanced cost, which was to be intimated during/after the construction of flats. The aforesaid option was to be exercised by the allottees on or by 31.07.2006 failing which the earnest money alongwith interest was to be refunded. The same was communicated to Respondent no. 2 vide letter dated 27.06.2006 whereupon she submitted her undertaking for retention of the flat and for paying of enhanced cost as and when demanded on 04.07.2006.

5. The intimation for draw of lots for flats, after the completion of project, was given to Respondent no. 2 vide letter dated 14.07.2014 informing that the draw of lots for flats shall be held on 03.06.2014. Respondent no. 2 participated in the said draw of lots for the flats and was allotted Flat no. 169 at Ground Floor and intimation regarding the allotment was duly given to her vide letter dated 14.07.2024 (**Annexure P-7**). Respondent no. 2 paid the cost of the flat and physical possession of the same was delivered on 04.09.2014 vide possession letter of even date (**Annexure P-8**).



6. Respondent no. 2 thereafter filed complaint before Punjab State Consumer Disputes Redressal Commission seeking compensation due to delay in handing over the possession and also sought interest on amount deposited along with other consequential reliefs and the same was allowed by the State commission vide its order dated 16.01.2019 **(Annexure P-12)**.

7. The above order passed by Punjab State Consumer Disputes Redressal Commission was challenged by Respondent no. 2 before National Consumer Disputes Redressal Commission and an application for Condonation of delay was also moved along with the said appeal which was allowed vide order dated 05.02.2024 **(Annexure P-1)**.

Arguments by the Petitioner:-

8. Learned Counsel for the Petitioner contends that the National Consumer Dispute Redressal Commission erred in allowing the Appeal filed by the Respondent no. 2 as the same was preferred after a considerable delay of 420 days. He contends that no cogent or satisfactory reason for condonation of delay in filing of appeal was mentioned and in the application for condonation of delay, it was simply mentioned that the delay in filing of appeal resulted due to paucity of funds.

9. He further contends that before allowing the said Appeal it was incumbent upon the Appellate Authority to first decide the Application for Condonation of delay and that without adjudicating upon the said application, it could not have passed the impugned order, as the same was in conflict with law and various judicial pronouncements. It is stated that Order 41 Rule 3A of the Civil Procedure Code, 1908 provides for



Application for Condonation of delay and the said provision clearly provides that no order of interim relief can be passed without deciding the said application first. Therefore, the grant of final relief without deciding the application by the Appellate Authority is erroneous and deserves to be set aside.

10. To further buttress his arguments, he places reliance on the judgment of Hon'ble Supreme Court in the case of **Gagandeep Pratishthan Pvt. Ltd. vs M/s Mechano** reported as **(2002) 1 SCC 475** to contend that "Courts should first decide the question of condonation of delay and the objection with regard to maintainability of appeal, before proceeding with the appeal." He further places reliance on the judgment of Madhya Pradesh High Court in the case of **Manoramabai w/o Prakash Chandra Airen vs State of M.P. and others** reported as **2012 SCC OnLine MP 519**; judgment of Himachal Pradesh High Court in the case of **Tara Chand & ors. vs Virender Singh & anr.** reported as **2015 SCC OnLine HP 1349**; judgment of Rajasthan High Court in the case of **Pura Ram vs Jeta Ram** reported as **2018 (2) RRT 1086** and judgment of Calcutta High Court in the case of **Sri Gouri Shankar Chatterjee & anr. vs Howrah Municipal Corporation & ors.** reported as **1998 SCC OnLine Cal 3** wherein similar proposition of law as expounded by the Hon'ble Supreme Court in **Gagandeep Pratishthan (Supra)** is laid down.

11. No other argument or judgment has been cited by the Learned Counsel for the petitioner.

**Consideration: -**

12. The primary question that arises for consideration before this court is not that the Application for Condonation of delay has to be decided first before proceeding further but whether once the judgment is passed by the NCDRC would it be deemed to have considered and allowed the application for condonation of delay?

13. The judgments cited by the Learned Counsel for the Petitioner are not disputed upon, however the same are not relevant for the adjudication of the present case, as it is evident that vide order dated 24.11.2023 the matter was taken up by the NCDRC and the present petitioners were proceeded against ex-parte and the case was taken up on merits. The same is extracted as under: -

“None appears for respondent. Case is taken up ex-parte on merit against respondent.

Heard counsel for appellant. Challenge is to the order dated 16.1.2019 in CC No.604/2018. Vide this impugned order dated 16.1.2019, 9 Consumer Complaints were disposed of together. Appellant states that out of 9 Consumer Complaints, 7 Consumer Complaints Nos. viz. 602/2018, 605/2018, 606/2018, 607/2018, 608/2018, 609/2018, 610/2018 arising out of common order in FA/519/2019, 520/2019, 521/2019, 522/2019, 522/2019, 523/2019, 523/2019, 524/2019, and 525/2019 were disposed of by this Commission's order dated 25.2.2020. He prays that this First



Appeal may also be disposed of in terms of same order. Hence, after hearing counsel for appellant, judgment is reserved.”

14. The Hon’ble Supreme Court in the case of **Davinder Pal Sehgal & Anr. vs Partap Steel Rolling Mills Pvt. Ltd. & Ors.** reported as **(2002) 3 SCC 156** has held that merely because there is no reference to application for condonation of delay in the order of the court, it cannot be said that the same was not considered. The relevant para is extracted as herein below: -

7. We have perused the restoration application as well as petition filed under Section 5 of the Limitation Act for condonation of delay in filing the same. It appears that in the application for restoration, all relevant facts have been stated not only to show that the plaintiffs had sufficient cause for non appearance on 24th August, 1988 but also to show sufficient cause for condonation of delay in filing the restoration application. This is the reason why in the petition for condonation of delay, it has been simply stated that facts stated in the restoration application may be taken into consideration for condonation of delay in filing the restoration application. Therefore, merely because in the order of trial Court, specifically, there is no reference to petition for condonation of delay, it cannot be said that it did not consider the same. From a bare perusal of the order, it would appear that the grounds stated in the restoration application for non appearance on 24th August, 1988 as well as delay in filing the restoration application having found favour with the trial Court, the suit has been restored, therefore, it cannot be said that the order of restoration has been passed without condoning the delay in filing the restoration application. The



submission of the learned counsel appearing on behalf of the respondents that application for restoration filed on behalf of the plaintiffs was dismissed earlier for non prosecution cannot be taken to be a ground for throwing out the restoration application as the High Court on the earlier occasion set aside order of the trial Court whereby restoration application was dismissed for non prosecution and the said order attained finality. In view of these facts, we are of the opinion that trial Court had not acted in the exercise of its jurisdiction illegally or with material irregularity and accordingly the High Court was not justified in interfering with its order in the exercise of revisional jurisdiction.

15. The Allahabad High Court in the case of **Indrajeet Singh vs Deputy Director of Consolidation and Ors.** reported as **2014 SCC OnLine All 2564** has taken a view that before insertion of Order 41 Rule 3A, delay could be condoned even on an oral prayer and that if the order in appeal has been passed ignoring delay condonation application, then delay shall be deemed to be condoned. The relevant para is extracted as herein below: -

9. Before insertion of Order 41 Rule 3-A in Code of Civil Procedure, 1908, or in other enactment, where there is no such provision as Order 41 Rule 3-A CPC, Supreme Court in State of Orissa v. Kalicharan, (1971) 2 SCWR 840 and L/Naik Mohinder Singh v. Chief of Army Staff 1990 Supp SCC 89 (1) and this Court also took in view that delay can be condoned even on oral prayer. Section 5 of the Limitation Act, 1963 requires explanation of the cause, for not preferring the appeal or the application within period of limitation prescribed under the Act. Explanation of delay can be given even in memorandum of the appeal. Supreme Court in State of



West Bengal v. Administrator Hawarah Municipality, AIR 1972 SC 361, Dalvinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. AIR 2002 SC 451 and Hindustan Construction Company Ltd. v. Gopal Krishna Sen Gupta, AIR 2003 SC 2335, and this Court in Jainul Abdin v. DDC, 1974 (Suppl) RD 162, held that if the order in appeal has been passed ignoring delay condonation application then delay shall be deemed to be condoned.

16. The Allahabad High Court again in the case of **Dropati Devi vs Board of Revenue & Ors.** reported as **2018 SCC OnLine All 3669** has held that if an order in appeal has been passed ignoring the delay condonation application, then such delay shall be deemed to be condoned.

The relevant para is extracted as herein below: -

10. Learned counsel for the petitioner further relied upon 2014 (123) RD 254 (Indrajeet Singh v. D.D.C. Gorakhpur) and relied upon paragraph 9 of the same, therefore, the same is being reproduced here as under:—

“Before insertion of Order 41 Rule 3-A in Code of Civil Procedure, 1908, or in other enactment, where there is no such provision as Order 41 Rule 3-A CPC, Supreme Court in State of Orissa v. Kalicharan, (1971) 2 SCWR 840 and L/Naik Mohinder Singh v. Chief of Army Staff 1990 Supp SCC 89 (1) and this Court also took in view that delay can be condoned even on oral prayer. Section 5 of the Limitation Act, 1963 requires explanation of the cause, for not preferring the appeal



or the application within period of limitation prescribed under the Act. Explanation of delay can be given even in memorandum of the appeal. Supreme Court in State of W.B. v. Administrator Hawarah Municipality, AIR 1972 SC 361, Dalvinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd. (2002) 3 SCC 156 : AIR 2002 SC 451 and Hindustan Construction Company Ltd. v. Gopal Krishna Sen Gupta, (2003) 11 SCC 210 : AIR 2003 SC 2335, and this Court in Jainul Abdin v. DDC, 1974 (Suppl) RD 162, held that if the order in appeal has been passed ignoring delay condonation application then delay shall be deemed to be condoned.”

- 11. Learned Standing Counsel tried to support the impugned orders.*
- 12. He submitted that unless there was a specific order condoning the delay it could not be deemed that the delay had been condoned and therefore it was essential that the Sub-Divisional Officer should decide the matter afresh and pass an order on the delay condonation application.*
- 13. Having heard the learned counsel for the petitioner and the learned Standing Counsel and after having perused the impugned orders, I am of the view that the matter need not be remanded back to the Sub-Divisional*



Officer for giving a specific finding as to whether delay had to be condoned. As per the law laid down in (2002) 3 SCC 156 : (2002) AIR (SC) 451 (Davinder Pal Sehgal v. Partap Steel Rolling Mills Pvt. Ltd.), (2010) 12 SCC 159 : 2010 AIR (SC) 2991 (Bhagmal v. Kunwar Lal) and 2014 (123) RD 254 (Indrajeet Singh v. D.D.C. Gorakhpur) when the Court had restored the Suit it shall be deemed it had condoned the delay. The Court shall now proceed with the suit as was filed by the respondent No. 5, Indra Dev, afresh and shall decide the same within a period of six months from the date of presentation of a certified copy of this order. Till the suit is decided status quo shall be maintained over the property in question.

17. Similarly, dealing with the application for condonation of delay and the procedure therewith, the Madhya Pradesh High Court in the case of **Zigitzahealth care Ltd. Vs Naresh Kumar Verma & ors.** reported as **2022 SCC OnLine MP 5412** has held that once the appeals were proceeded for hearing, delay was deemed to be condoned. The relevant para is extracted as herein below: -

22. So far as question of limitation is concerned, after issuance of notice to the application for condonation of delay as well as admission, no such reply has been filed by the review petitioner-M/s Zigitza Health Care Limited nor any objection at that time of hearing of writ



appeal was taken. Paragraphs 14, 15 and 16 of impugned judgment testify the said fact and those proceedings cannot be challenged in review jurisdiction. Once the appeals were proceeded for hearing, delay was deemed to be condoned. Even otherwise procedures are handmaid to the justice and not master of it. Besides that, writ appeal has been preferred against the order passed by learned Writ Court wherein writ petition under Article 226/227 of Constitution preferred by National Health Mission was dismissed and therefore, in writ and writ appellate jurisdiction, provisions of limitation are not strictly construed as in the matter arising out of Civil Procedure Code.

Akin to the observations made above, the Patna High Court in the matter of **Shiv Pd. Sah vs Addl. Collector and others** reported as **1996 SCC OnLine Pat 119** has also held that once there is provision for condoning the delay and the said application has also been filed and the claim is disposed of on merit, it will be presumed that the delay was condoned. The relevant para is extracted as herein below:-

- 6. It is not disputed that an application for condoning delay for the period 24.7.80 to 2.8.80 was filed and the Circle Officer allowed the claim for the said period also*



besides for the period 2.8.80 to 21.10.80. It is well settled that even if a petition is barred by limitation and there is provision for condoning the same and a petition is filed for the said purpose and the authority or the court considers the claim/grievance and dispose it of on merit, it will be presumed that the delay in making an application is condoned after considering the petition for condonation of delay. The principle laid down in the aforementioned cases referred to by the learned counsel for the petitioner are complete answer for the said proposition.

18. Therefore, taking into consideration the Order dated 24.11.2023 it is evident that the matter was taken up on merit only after condonation of delay. Learned Counsel for the Petitioner has however argued that no cogent reason for delay in approaching the appellate authority was pointed out by Respondent no. 2 and only a simplicitor reason of “shortage of funds” has been mentioned and the same does not amounts to sufficient cause and therefore the limitation should not have been condoned.

19. Section 5 of the Limitation Act, 1963 provides for extension of prescribed period in certain cases and the usage of word “sufficient cause” in the section has been a matter of interpretation in various cases. Hon’ble Supreme Court in the case of **G. Ramegowda vs Spl. Land Acquisition Officer** reported as **(1988) 2 SCC 142** while summarizing the



position of law on ‘sufficient cause’, had the occasion to observe that the contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals have been set out in a number of pronouncements of this Court. It was observed to be true that there is no general principle saving the party from all mistakes of its counsel. Noting that there is no reason why the opposite side should be exposed to a time-barred appeal if there was negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel, it was further observed that each case will have to be considered on the particularities of its own special facts. However, this Court reiterated that the expression ‘sufficient cause’ in section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. This was followed by these words:

“15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

17. Therefore, in assessing what, in a particular case, constitutes ‘sufficient cause’ for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict,



these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible.

It is rightly said that those who bear responsibility of Government must have ‘a little play at the joints’. Due recognition of these limitations on governmental functioning — of course, within reasonable limits — is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process.”

Thus, “Sufficient Cause” is any such cause for which party could not be blamed for his absence. It means that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. The expression “sufficient cause” under section 5 of the Act must receive a liberal construction so as to advance substantial justice. It is the “sufficient cause” which gives jurisdiction to a Court to condone the delay. Normally, after the expiry of the period right to sue extinguishes and the other side acquires a right which normally should not be disturbed. Only in case of



proving a sufficient cause the applicant is entitled to continue the litigation further. The expression “sufficient cause” employed by the Legislature is elastic to enable the Court to apply the law in a meaningful manner. In **Collector, Land Acquisition, Anantnag v Mst Katiji** reported as AIR 1987 SC 1353 the Hon’ble Supreme Court held thus—

3.The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such liberal approach is adopted on principle as it is realized that:—

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.



4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Once the cause of delay has been considered and allowed by the NCDRC it should not be interfered with as it is the prerogative of a court before whom the matter is preferred to condone or not to condone the delay on the basis of the application made and reasoning given. Thus the argument advanced by the petitioner does not find any force with me.

20. Even otherwise, a perusal of the order dated 24.11.2023 passed by the National Consumer Disputes Redressal Commission shows that a specific order had been passed by it to take up the case on merits against the respondents. The necessary consequences which flows from the same is that the delay in filing of the appeal stood condoned. Moreover, the petitioner never filed any objection against the application seeking condonation of delay and even in the present case, the order dated



24.11.2023 ordering to proceed ex-parte is not a subject matter of challenge. Hence, the petitioner cannot be permitted at this juncture to escape from the consequences that flow from the order dated 24.11.2023.

21. During the course of arguments, a query was posed to the learned counsel for the petitioner with regards to whether there is any illegality in the order passed on merits by the NCDRC, he was unable to point out any such illegalities on merit.

22. Thus taking it from any perspective it is evident that the delay application would be deemed to have been condoned by the NCDRC and the matter heard on merits. The respondents were also awarded the opportunity to appear, and were duly served, however they chose not to appear, for reasons best known to them. Even now, no argument has been raised to point out any illegality, impropriety or perversity in the order of the National Consumer Disputes Redressal Commission. A technical objection, despite the petitioner failing to establish any illegality in the award passed would rather be unjust to the respondent who claimed that she could not file the appeal in time since she did not have financial resources. The petitioner would not be permitted by this Court to compound the hardship of the allottee by exposing her to unnecessary financial burden and that too simply for a technical procedural compliance. I do not find any merits in the present petition and the same is hereby **dismissed in *limine*.**

(VINOD S. BHARDWAJ)
JUDGE

17.09.2024

Mangal Singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No