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

\+ RFA 452/2019

SOUTH DELHI MUNICIPAL CORPORATION .....Appellant
Through: Ms. Madhu Tewatia & Mr. Adhirath Singh, Advocates.

versus

M/S CHEMICAL & METHALLURGICAL DESIGNS CO LTD .....Respondent
Through: Mr. Sunil Kumar Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% **10.12.2024**

<u>RFA 452/2019 & CM APPL. 22757/2019</u> (<u>*condonation of delay in filing the appeal*</u>)

1. This is an application for condonation of delay in filing of the appeal. Although the period of delay has been mentioned in the prayer clause as 71 days, Ms. Madhu Tewatia, learned counsel for the appellant-Municipal Corporation of Delhi ["MCD"], submits that the delay is, in fact, of 336 days as stated in paragraph 3 of the application.

2. The explanation for the delay is provided in paragraphs 4 and 5 of the application, which reads as follows:-

> *"4. That, the said delay has occurred for the reasons and in the premises explained herein below: -*
> *4.1. That the certified copy of the impugned judgment and decree dated 23.09.2017 was forwarded by the Municipal counsel Shri Abhishekh Kaushik to the Law department on 14.11.2017 along with the case files while noting that it was a fit case for filing the Appeal*

4.2. That the Files and the impugned judgment were sent to the A&C Department 13.12.2017 for necessary action in terms of the impugned judgment and decree and advise of the counsel

4.3. That Shri Mukesh Gupta Ld. Advocate was engaged by the Law Department vide engagement letter dated 05.02.2018 ***who returned the case files on 09.04.2018 stating that there were very less chances of success.***

4.4. That thereafter Shri V Madhukar Advocate was engaged by the Law Department vide engagement letter dated 24.04.2018. However Shri Madhukar also ***returned the case files on 08.06.2018 stating that there were very less chances of success***

4.5. That the Department then forwarded the matter seeking possible option/ opinion. Para 9 and 10 of the note dated 18.06.2018 is as under:-

> *"9. In this regard, Mpl. Counsel Sh. Abhishek Kaushik has advised that this case is fit for appeal. However, Mpl. Counsel Sh. Mukesh Gupta has advised that on the facts of the case, there are very less chances of the success in the Appeal.*
>
> *Also, Mpl. Counsel Sh. Madhukar has advised that filing an appeal against the impugned order is most likely to be an exercise in futility and would not only entail expense but may also invite costs.*
>
> *10. Considering the amount to be refunded i.e. Rs. 33,03,712/- (approx.) and the difference of opinion among Mpl. Counsel regarding filing of appeal in the matter, this matter/judgment may be forwarded to consultant, A&C Department (HQ) and Law Department, SDMC for seeking possible options/opinion available before the department in the matter."*

4.6. That, once again the matter was marked to the current Municipal Counsel for filing an Appeal against the impugned judgment and decree of the Id ADJ who ***returned the case files on 30.08.2018 stating that filing of an Appeal was not advised***

4.7. Being a policy matter as regard the grant of rebates and involving interpretation of the Schemes regarding admissibility of rebates on timely payment of taxes the department decided to pursue the matter

4.8. Accordingly the matter was entrusted the matter to Sh. Abhishek Kaushik on 31.08,2018 for filing the Appeal who had earlier advised that the matter was fit for filing of an Appeal. But unfortunately the matter was returned by the said counsel

*4.9****. However on the persistence of the Tax Department HQ SDMC the Commissioner SDMC approved the matter for filing the Appeal on 17.10.2018 as a last ditch attempt and the officials convinced the current Municipal counsel to file the present appeal in view of the***

interpretation and applicability of the relied upon policy and grant of rebates

5. That it is seen that the Department had been diligent in pursuing the matter and had never slept over the issue but to its misfortune none of the lawyers were willing to file the appeal. The Department also tried getting the appeal filed through the counsel who had favorably opined in favor of the SDMC but he too returned the case files. The File was then entrusted the current Counsel on 17.10.2018 but on account of the preoccupation of the counsel's daughter's wedding in Delhi and Bombay and consequential formalities involved, the appeal is being filed on 30.11.2018"

[Emphasis supplied.]

3. The only explanation discernible from the aforesaid averments, is that three learned counsel for MCD returned the file on the ground that it was not a fit case for appeal. Only the first counsel, who had himself represented MCD before the Trial Court, opined to the contrary. Even he returned the file when it was sent to him for filing of the appeal. These averments can hardly constitute sufficient cause for delay in filing of the appeal. Certainly, a litigant is entitled not to accept the advice of three successive counsel and choose to appeal, but it must do so within the time provided by the statute. The fact that the statutory authority has to go from counsel to counsel to have the appeal filed, does not satisfy the test of Section 5 of Limitation Act, 1963. The delay – in this case of approximately 11 months – cannot be explained on the basis of such administrative exigencies of statutory authorities.

4. In any event, the application offers no explanation for the delay from 23.09.2017 to 14.11.2017, when the matter was first sent to the Law Department of MCD, or from 13.12.2017 to 05.02.2018, when it remains pending with the Assessment and Collection Department, MCD. After four counsels had already returned the matter, it was again pending in the

Tax Department from 31.08.2018 to 17.10.2018.

5. The matter has to be considered in the light of applicable principles laid down by the Supreme Court. The Supreme Court, in *P.K. Ramachandran v. State of Kerala*, (1997) 7 SCC 556, held that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute prescribes and the courts have no power to extend the period of limitation on equitable grounds. In *Basawaraj v. Special Land Acquisition Officer*, (2013) 14 SCC 81 also, the Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large.

6. I am also informed that in the meanwhile, the judgment and decree have been executed and the amount decreed by the learned Trial Court has been recovered by the respondent-plaintiff. As held by the Supreme Court in *Pathapati Subba Reddy (Died) By L.Rs. and Others v. Special Deputy Collector (LA)*, 2024 SCC OnLine SC 513, while considering an application for condonation of delay, the Court is also required to consider prejudice caused to the successful parties, whose right to appropriate the decretal amount vests upon expiry of the period of limitation for filing of an appeal.

7. Having regard to the above circumstances, and particularly to the abject insufficiency of the cause shown in the application, the application for condonation of delay is dismissed.

8. Consequently, RFA 452/2019 is rejected, as having being filed

beyond the period of limitation.

PRATEEK JALAN, J

DECEMBER 10, 2024
'pv/JM'/