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

% ***Date of decision: 18th July, 2024***

+ **CM(M) 2426/2024 & CM APPL. 24576/2024**

JUBEDA BEGUM

.....Petitioner

Through: **Mr. Vineet Jain, Advocate**

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: **Mr. Ashutosh Gupta, ASC for MCD
along with Ms. Divya Rao, Ms.
Mansha Batra, Mr. Shivang Mahajan,
Mr. Kartik Mukhija and Mr. Arman
Monga, Advocates**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner has challenged order dated 06.04.2024 whereby her application seeking condonation of delay in filing the appeal has been dismissed by the learned Principal District & Sessions Judge (in short learned PDJ) and resultantly, the appeal has also been dismissed, being time-barred.
2. Initially, admittedly, the petitioner herein was served with a demolition order by MCD.
3. She challenged the same by filing an appeal before the Appellate Tribunal, MCD, Delhi. Her such appeal, filed under Section 343 of Delhi Municipal Corporation Act, was dismissed observing that demolition order



had been passed by Quasi Judicial Authority in accordance with law.

4. Such order of dismissal was passed by the learned Tribunal on 12.12.2022.

5. Admittedly, an appeal against such order is maintainable before District Judge under section 347 (D) of DMC Act.

6. However, such appeal was lodged on 06.07.2023 with a delay of 173 days.

7. Undeniably, any appellant, who files any such appeal beyond the prescribed period of limitation, has to show sufficient cause and is required to explain the delay of each day.

8. Appellant, in her application moved before the learned PDJ, claimed that her son Tariq was harassing her and was behind all the litigations and, therefore, she went into depression. She seemed to contend that she was rather legally advised not to file any appeal. Later on, when she contacted her new counsel, he told her that period of limitation had already expired and that if the appeal was to be filed then it would be filed with an application seeking condonation of delay. She claimed that delay was neither intentional nor deliberate.

9. Such reasons, however, did not find any favour with learned PDJ. It did observe that the Courts are empowered to condone the delay provided sufficient cause was shown for not availing the remedy within the prescribed period of limitation. It also noted that law of limitation was founded on public policy and the objective was not to destroy the rights of the parties but to ensure that they approach the Court for vindication of their right without unreasonable delay. However, observing that the appellant had failed to show sufficient cause for condonation of inordinate delay of 173



days, her application was dismissed.

10. Such order has been impugned.

11. It is also noticed that when the appeal was pending before learned PDJ, her son Tariq also appeared before the said learned Court and opposed the application, despite the fact that the matter was essentially between appellant and MCD.

12. Indeed, there is no strait-jacket formula which may come handy when it comes to condonation of delay. Undeniably, the expression “sufficient cause” mentioned in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice.

13. Petitioner claimed that she was fed up with the litigation and at one point of time, she decided not to file appeal as advised by her counsel and even went into depression.

14. Of course, she has not placed on record any document to show her such mental condition and has not even revealed the name of her counsel who advised her not to file any appeal. But, at the same time, while taking a holistic approach, it was not decipherable that her conduct was enough to brand and castigate her as a completely irresponsible and careless litigant.

15. Aspect related to condonation of delay is, generally, a matter of discretion and the Limitation Act does not provide that such discretion would be exercised only if the delay is within the certain limit. The length or duration of delay cannot be the sole criteria for refusing condonation as there would be many cases where delay of long range had been condoned, when the explanation thereof was found to be acceptable and satisfactory.

16. The primary function of the Court is to adjudicate the dispute and to advance substantial justice. Undoubtedly, the unending period of taking



recourse to such legal remedy may lead to uncertainty and perplexity in the mind of the other party and it is only in the aforesaid context that the law of limitation is founded on public policy.

17. Petitioner was, undoubtedly, slow in taking recourse to her legal remedy but there is nothing to demonstrate that it was deliberate or actuated by malice. After all, there is a demolition notice against her and it cannot be assumed that delay in approaching the Court was going to help her in any manner. Moreover, there is nothing which may suggest that the reasons put forth by her smack of malafide. Merely because, she did not care to place on record any document cannot lead to any such inference.

18. Be that as it may, in such type of matters related to demolition, taking too strict a stand may result in inequality as there is no decision on the merits of the case as such. Moreover, endeavour of the Court should be to decide the case on merits, instead of on technicalities. Substantial justice being paramount, the technical consideration should not, generally, be given unwarranted weightage.

19. Resultantly, the Present petition is allowed and delay in filing appeal is condoned.

20. Both the parties are directed to appear before the Court of learned Principal District & Sessions Judge (Central) on 06.08.2024. at 2.00 PM.

(MANOJ JAIN)
JUDGE

JULY 18, 2024/dr