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

+ CM(M) 1698/2023

JATINDER SINGH KAINTH

..... Petitioner

Through: Mr. Aditi Shivadhatri, Mr. Subedita
Rani and Mr. R.R. Bharati,
Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Mr. Roshan Lal Goel and Mr. Anju
Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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21.03.2024

1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 25.07.2023 vide which the Learned Presiding Officer, Appellate Tribunal, Municipal Corporation of Delhi (hereinafter "Appellate Tribunal") has dismissed the application seeking restoration of the appeal No.764/2013, which was dismissed in default vide order dated 06.10.2021 by the Appellate Tribunal. Along with the same, an application under Section 5 of the Limitation Act, 1963 also came to be dismissed vide the impugned order.

2. The brief facts for the disposal of the present petition are that on 06.02.2008, officials from the Municipal Corporation of Delhi (hereinafter "MCD") sealed the ground floor as well as the basement of the property bearing No.M-27, Greater Kailash 1, New Delhi 110048 on account of alleged misuse.

3. Aggrieved by the actions of the respondent/MCD, the petitioner preferred an appeal before the Appellate Tribunal of the MCD, bearing



No.764/2013 titled as “*Jatinder Singh Kainth vs Municipal Corporation of Delhi*”. The respondent sought the imposition of a penalty on the petitioner and after filing its status report dated 13.12.2016, pursued its case before the learned Appellate Tribunal. However, on 06.10.2021, due to non-appearance of the appellant, the appeal was dismissed in default.

4. Appellant preferred an application for setting aside of the dismissal in default order as well as an application for condonation of delay in preferring the said application. However, the learned Appellate Tribunal while passing the impugned order on 25.07.2023, dismissed the applications of the petitioner and being aggrieved with the order, petitioner filed the present petition.

5. The learned counsel for the petitioner states that a hyper-technical approach has been adopted by the Appellate Tribunal, without taking into consideration the hardships faced by the petitioner due to COVID-19 pandemic. Further, the learned Appellate Tribunal ignored the directions passed by the Hon’ble Supreme Court when it *suo moto* took cognizance for the extension of limitation on account of COVID-19 pandemic.

6. It was submitted that before pandemic COVID-19, the petitioner was regularly and diligently appearing in the Court. During the COVID-19 pandemic, the proceedings before the Court got suspended and when the court started functioning on virtual basis, he could not contact his counsel as he had lost his mobile number. Due to want of instructions, even his counsel did not appear before the Court. He submitted that when the Courts reopened in December 2022 physically, he approached the Court and on inquiry, he was apprised that his appeal was already dismissed in default on 06.10.2021. It is submitted that the Hon’ble Supreme Court vide the



judgment titled “**Suo Moto Writ Petition (c) No.3 of 2020 In Re: Cognizance for Extension of Limitation**” had already extended the period of limitation from 15.03.2020 to 28.02.2022.

7. However, the learned Appellate Tribunal failed to consider all the submissions and passed the impugned order thereby dismissing the application seeking condonation of delay. The Learned counsel submitted that grave irreparable loss shall be suffered by the applicant in case the application is not allowed and the appeal is not restored as the premises of the appellant are lying sealed. It is further submitted that it cannot be said that the petitioner was not diligent in pursuing his appeal as the petitioner is interesting in getting his property desealed and his said right cannot remain suspended, therefore, the petition be allowed.

8. Learned counsel also submitted that during the COVID period, not being a resident of India, various protocols had to be followed, therefore, it was not possible for the petitioner to come to India and to pursue his appeal.

9. Arguments were vehemently opposed on behalf of the respondent by submitting that the petitioner had adopted a very casual approach to pursue his appeal. Even if, he takes the benefit of not pursuing the appeal or not filing an application seeking restoration of his appeal w.e.f. 06.10.2021 to 28.02.2022, still no explanation has been given for not filing an application for restoration of appeal from 01.03.2022 to 23.02.2023. The petitioner has failed to provide any cogent reason or sufficient cause for not getting appeal restored for such a long duration.

10. It was submitted that there is force in the arguments submitted on behalf of the petitioner that since he was not in contact with his advocate, therefore, an appropriate application for restoration of appeal could not be



filed in time. The Learned counsel submits that the petitioner was pursuing his appeal through his GPA who is a resident in India and the said GPA was giving instructions to the counsel for the petitioner. Moreso, if the advocate of the petitioner was negligent in not following his case, no complaint has been preferred against the advocate. Therefore, there is no merit in the submission made on behalf of the petitioner.

11. It is submitted that the petitioner himself has stated that he came to know about the dismissal of order dated 06.10.2021 in the month of December, 2022, still he did not take any steps to get his appeal restored. This clearly indicates that the petitioner was never interested in pursuing his appeal. Learned Trial Court has thus passed the befitting order after noting all submissions which requires no interference by this Court.

12. In view of the rival submissions made at the Bar, it is relevant to notice the observations made by the learned Trial Court in the impugned order which read as follows:

“It is relevant to mention that the applicant / appellant though taken a ground that he lost track of the case due to Covid 19. However, a perusal of the record shows that counsel of the appellant or appellant in person lastly appeared in this case on 26.11.2019, when the case was adjourned for 27.02.2020. However, none has appeared on behalf of appellant from 27.02.2020 till 06.10.2021 and finally the case was dismissed for non-prosecution by the Ld. Predecessor of this Court.

No doubt that due to the emergent situation created due to Covid19 in whole India since March 2020, the Hon'ble Supreme Court of India in a suo moto case, extended the period of limitation from March 2020 to March 2022 and further for 90 days from 31.03.2022.

The appeal filed by applicant / appellant was dismissed for non-prosecution on 06.10.2021. The restoration application could have been filed within 1 month from the date of dismissal of appeal i.e. up till 06.11.2021. However, the Hon'ble Supreme Court of India has condoned, the delay during covid period from March 2020 to March 2022 and further for 90 days from 31.03.2022 to the parties to exercise their right, therefore, the appellant



could have filed the application for restoration till 01.07.2022. However, this application has been filed by the appellant on 24.02.2022 i.e. after more than 8 months from the date of expiry of extended period of limitation.

The applicant / appellant has mentioned in the application that when Court re-opened physically, he approached to the Court in December 2022 and came to know that appeal was dismissed in default due to non-appearance. However, fact remains that physical functioning of the Court started in March 2022 and not in December 2022.

If assertion made by applicant/ appellant is accepted that he visited the Court to enquire his case in December 2022 and came to know that appeal was dismissed for non-prosecution, even then the instant application has been filed after 2 months from the said period without giving any explanation.

The applicant / appellant has not assigned any reason in the entire application for not filing the instant application for restoration of appeal within the reasonable time after July 2022, what to talk about sufficient cause.

In view of the above facts and circumstances, I am of the considered view that the applicant / appellant has failed to assign any sufficient cause for the delay of 1 year and 4 months from the date of dismissal of the appeal or 8 months from the date of expiry of extended period of limitation as granted by the Hon'ble Supreme Court of India in suo moto case or 2 months from the date when the applicant / appellant has come to know about dismissal of the appeal as per his own assertion."

13. This court observes that petitioner is not a resident of India and travel restrictions were imposed during the COVID-19 therefore, it was not possible for the petitioner to pursue the case diligently during the said period. Moreso, w.e.f. 15.03.2020 to 28.02.2022, the Hon'ble Supreme Court had the period of limitation for every kind of litigation. There is also merit in the submission of the petitioner that he lost contact with his counsel and it was not possible for the petitioner to keep up with the status of the appeal specifically keeping in view the circumstances prevailing during COVID pandemic and for sometime subsequent thereto. While there is a



noticeable delay of 270 days in filing the application for restoration, the reasons stated by the petitioner seem to have merit. The power of the Court to condone a delay is a discretionary power and as long as sufficient cause is shown and backed by plausible explanations, the Court is well within its jurisdiction to condone a delay it may deem fit. The Hon'ble Apex Court highlights the same in **“Sheo Raj Singh & Ors vs Union of India & Anr”** 2023 10 SCC 531 whereby it is stated that:

“30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial”

“31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an “explanation” and an “excuse”. An “explanation” is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an “explanation” from an “excuse”. Although people tend to see “explanation” and “excuse” as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real”
(Emphasis supplied)

14. Accordingly, in the background of the present case, the appellant has shown sufficient cause for use of discretion of this Court; in condoning the delay of 270 days in filing the appeal seeking restoration of appeal, however, the delay is condoned, subject to cost of Rs.30,000/- to be paid by the petitioner to the respondent within two weeks from today.



15. With the above-said observations, the impugned order is set aside.
16. The appeal is restored to its original number before the learned Trial Court.
17. Consequently, the petition is allowed.

SHALINDER KAUR, J.

MARCH 21, 2024/ab