



\$~72

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 06th November, 2024

+ CM(M) 3769/2024 & CM APPL. 64802-64803/2024

DELHI DEVELOPMENT AUTHORITY

.....Petitioner

Through: Ms. Vrinda Kapoor, Ms. Saumya Soni
and Mr. Vishal Vaid, Advocates

versus

SWARAN CHADHA

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)**CM APPL. 64803/2024 (exemption)**

Exemption allowed, subject to all just exceptions.

CM(M) 3769/2024 & CM APPL. 64802/2024

1. Present petition has been filed under Article 227 of the Constitution of India and impugns order dated 07.10.2024 passed by learned State Consumer Disputes Redressal Commission, New Delhi (in short '*State Commission*') in Appeal Execution No. 10/2024.

2. Initially, a complaint case was filed by the respondent Ms. Swaran Chadha, which was registered as Complaint Case No. 599/2006. Such complaint was disposed of on 13.05.2008 and the operative part of the aforesaid order reads as under: -

"It is further observed that in the interest of justice and in order to uphold the principle of equity, it is required of the O.P. who are a premier housing institution to provide shelter to the registrants waiting with the hope that in the hour of need they would have dwelling house in Delhi for their personal residence. The O.P. are expected to be more magnanimous and less



technical in cases like the present one where the complainant along with her husband had migrated to USA and after sad demise of her husband has no place of her own to live in Delhi. No doubt, the O.P. can-not be held guilty for deficiency of service in view of our above discussion, yet we find it their bounden duty to consider the case of the complainant more compassionately on humanitarian grounds. They are, accordingly, directed to ensure that in the light of judgment in Writ Petition No. (C) No. 19095 of 2004 (Supra) they should allot a flat to the complainant by entering her name in the next draw of lot to be held after transferring registration of her late husband in her favour. In the peculiar circumstances of the case, the complainant cannot be held entitled to any further relief by this Forum. The complaint is disposed off without any order as to the cost. Copy of the order be sent to parties. File be consigned to Record Room.”

3. Aforesaid order was taken in appeal by Delhi Development Authority (in short “DDA”). As informed, such appeal was also dismissed by the learned State Commission and such order has, reportedly, attained finality.
4. Eventually, the complainant was forced to file an execution petition which was registered as Ex. 483/2014. During pendency of the aforesaid execution petition, the judgment debtor i.e. DDA had filed certain objections and the learned District Forum clarified as under: -

“In the present case, order under execution was passed on 13.05.2008 however, the date applicable for charging of cost of flat was not specified. As an executing court, this Commission has the power to remove the ambiguity in their own order.

Keeping the guidelines laid down by the Hon'ble High Court in WP (C) 19095 of 2004 in mind, the JD/DDA have to provide the flat to the DH in case it is found that the DH submitted application for change of address with proof. As stated earlier, in the order dated 13.05.2008 it was observed that the decree holder despite being provided two opportunities, failed to submit any proof regarding the applying for change of address and transfer of registration in the name of legal heirs prior to the date of allotment i.e 28.03.2008.

Therefore, this Commission is of the view that the rate applicable for the allotted flat would be as per the date of the judgment i.e 13.05.2008, when the right of the complainant to get the flat got crystallised in her favour as prior to this date the DH was not able to place of her change of address on



record. Therefore, JD is directed to calculate the price of the flat as on 13.05.2008 and offer possession to the DH within one month from the date of passing of this order. The DH is directed to pay the balance amount after calculation of the cost of the flat as prevailing on 13.05.2008 within one month of the Intimation of the calculation by the JD. Order be given dasti."

5. The above-said order is dated 08.05.2024 and, admittedly, copy of the impugned order was collected by DDA, same day.
6. The prescribed period for challenging the aforesaid order by filing an appeal is 30 days but it is quite obvious that appeal was filed beyond the prescribed period and the impugned order dated 07.10.2024 would also reflect that appeal has been dismissed, solely, on the ground of limitation.
7. Learned State Commission took note of the fact that the impugned order was passed on 08.05.2024 and, therefore, limitation period had expired on 07.06.2024. As per the averments made by DDA and as per the advice of their panel counsel, initially, a petition was filed in this Court. However, such petition was, eventually, withdrawn by them with liberty to avail permissible and available legal remedies. Such petition was permitted to be withdrawn by this Court on 22.07.2024 and thereafter, appeal was filed before the learned State Commission on 05.08.2024.
8. Contention raised by learned counsel for DDA is that delay was never intended and deliberate and it was merely a *procedural* one and that too of a very small period. It is stated that under some bonafide belief, they had filed the petition under Article 227 of the Constitution of India and when they realized that there was a remedy of filing appeal, they withdrew the aforesaid petition and immediately lodged appeal with the learned State Commission and, thus, learned State Commission should have taken a holistic view of the entire matter and should not have been non-suited them on the ground of



delay.

9. This Court is, at the same time, conscious of the plight of the complainant.

10. Her husband had applied for the allotment of DDA flat under 4th Rehabilitation Scheme way back in the year 1997. Her husband was serving in Air Force as civilian employee and after taking premature retirement, he migrated to USA and, thereafter, he had applied for the allotment of flat under the aforesaid scheme and despite approaching the Authority time and again to enquire about the allotment, he was always told to wait.

11. He, eventually, passed away.

12. Learned District Forum though observed that complainant had not been able to establish any deficiency in service but keeping in mind the directions passed by this Court in W.P. (C) 19095/2004 (decided on 16.12.2004) whereby similarly situated writ petitioners had been provided with equitable relief, directed DDA to consider the case of the complainant more compassionately on humanitarian grounds and, thus, DDA was directed to allot the flat in next draw of lot to be held after transferring registration of her late husband in her favour.

13. Learned District Forum also observed that the DDA was expected to be more magnanimous and less technical in the cases of such like nature as after the sad demise of her husband, the complainant had no place of her own to live in Delhi.

14. It is indeed unfortunate that despite the fact that equitable relief was passed in her favour way back in the year 2008, she is yet to reap the fruit of such order as the DDA is still contesting the execution, tooth and nail.

15. Though, DDA can always avail legal remedy provided under the law,



but in the given circumstances, if at all, it was aggrieved by the order dated 08.05.2024 passed by the District Forum, it should have filed the appeal without any kind of delay, more so, when it has a dedicated Legal Department and has battery of panel lawyers.

16. Be that as it may, fact remains that learned State Commission has exercised its discretionary powers while considering the application seeking condonation of delay and keeping in mind all the facts and circumstances of the case, it did not find it to be a fit case where delay should have been condoned.

17. In *Pathapati Subba Reddy (died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA)*: 2024 SCC OnLine SC 513, Hon'ble Supreme Court has observed as under:-

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag v. Katiji, this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.”

18. This Court is also conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India and the duty of the



supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others*: 2022 SCC OnLine SC 283.

19. The exercise of discretionary powers, while refusing to condone the delay, cannot be interfered under Article 227 of the Constitution of India unless the order shows complete lack of jurisdiction or perversity. There is nothing in the impugned order which may reflect the same and, therefore, the present petition is hereby dismissed.

(MANOJ JAIN)
JUDGE

NOVEMBER 6, 2024/dr