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28.8.2025
Ct. No. 16
SB

FAT 181 of 2016
CAN 1 of 2019 (Old No. CAN 757/2019)
CAN 2 of 2019 (Old No. CAN 781/2019)

Union of India & Anr.
Vs
Mosaraf Mondal & Anr.

Mr. Sukumar Bhattacharyya
Mrs. Sarda Sha ... for the appellants

Soumen Sen, J (Oral) :-

CAN 1 of 2019 (Old No. CAN 757/2019)

1. The stamp reporter has given a report and there is a delay of 1604 days in preferring the appeal. The explanation for the delay can be found in paragraph nos. 11, 12, 13 and 17.
2. The appeal is directed against a judgement passed by the learned Additional District Judge, ^{2nd} Court, Balurghat, Dakshin Dinajpur on 30.08.2011. The appeal has been preferred almost after **five** years. The petitioner was aware that the impugned order was passed on **30.08.2011** and it is their liability to pay the additional amount awarded by the learned Trial Judge. In the application for condonation of delay, we hardly find any explanation worth-mentioning for the delay caused in preferring the appeal.

3. In paragraph 11 of the said petition it has been stated that the certified copy of the impugned judgement was received on 17.08.2015 and it seems that the reason for the delay was that the Land Acquisition Collector failed to provide the same to the petitioner. There is not a single scrap of paper annexed to the petition justifying such bald allegation made against the Land Acquisition Collector. In any event, it was the duty of the appellant having suffered the impugned order to apply for the certified copy of the judgement in time and prefer the appeal within the statutory period or within a reasonable time. It is not being alleged that the appellant was not aware of the impugned order dated 30.08.2011, immediately after such impugned was passed by the Additional District Judge, 2nd Court, Balurghat, Dakshin Dinajpur.
4. The respondent no. 1 is the award holder. She lost her property due to acquisition of her plot of land. We presume that because of the pendency of the application, the respondent has not received the entire enhanced awarded sum.
5. The respondent is not represented.
6. The Government desire to acquire the land in question which belonged to the respondent no. 1 and the said plot of land was notified by the Gazette notification under Section 4 (1) of the Land

Acquisition Act 1894. The said Gazette notification was published in the Calcutta Gazette (extraordinary) 18.9.2000 and after acquisition of the said land it was utilized for the purpose of execution of Eklakhi, Balurghat New Rail Line Project.

7. The award holder cannot be deprived the benefits of the award dated 30.08.2011. The land acquisition proceeding commenced under Section 18 of the L.A. Act (Act I of 1984) read with WB Act-II of 1948 in the year 2002 and ultimately culminated in the modified award in view of the order dated 30.08.2011 passed by the Additional District Judge, 2nd Court, Balurghat, Dakshin Dinajpur. The respondent award holder was aggrieved by the adjudication by the Land Acquisition Collector and accordingly, made a reference under Section 18 of the L.A. Act before the Additional District Judge, 2nd Court, Balurghat, Dakshin Dinajpur in L.A. Case No. 307/08 which was decided in his favour by the impugned order.
8. The nature of the land was Danga and the said land was acquired by the L.A. Collector for the aforesaid project in connection with L.A. Case No. 40/99-2000. The petitioner received the payment of Rs.1,08,665/- as compensation award by the Land Acquisition Collector, Balurghat under protest and made a reference under Section 18 of the L.A. Act before the L.A. Collector to refer the dispute to Court for the

determination of proper value of market rate for her acquired land. The learned Trial Court answered the said reference in favour of the award holder and enhanced the market rate @Rs. 1 Lakh per acre along with solatium @ 9 per cent per annum on the awarded amount and interest @ 9 per cent per annum of the rest compensation.

9. It is well settled that Government cannot be a beneficiary of its own wrong and cannot claim to be a favoured litigant.

10. We are conscious of the fact that section 5 of the Limitation Act, 1963 has clearly stated that Court may admit any appeal or applications other than an application under any of the provisions of Order XXI of the Code of Civil Procedure (CPC) after the prescribed period, "if the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the applications within such period. (emphasis supplied).

11. The Section casts a duty upon the court to satisfy itself with the cause shown for the delay. The cause for the delay needs to be "sufficient" and not a mere cause. The court cannot exercise such power mechanically disregarding insufficient or unsatisfactory explanation. It implies discretion which needs to be applied judiciously. The discretion is conditional upon satisfaction of the Court with the

explanation offered which should be reasonable and acceptable. The award holders cannot be taken for a ride. They cannot suffer due to inaction, inertness and extreme casualness of the Union of India and its machinery. The pain and anxiety of a land looser and deprivation of his legitimate dues due to do proverbial lackadaisical approach should not be countenance. In a fairly recent decision of the Hon'ble Supreme Court in ***Brahampal v. National Insurance Company***, reported at **2021 (6) SCC 512** the apex court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against cases where the delay is inordinate as it might cause serious prejudice to the valuable and substantial rights accrued to the other party in the meantime. The Apex Court in explaining the term "sufficient cause" has stated:

"16. This Court in the case of Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs.,: (2008) 8 SCC 321, observed that:

13....The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant. (emphasis supplied)

17. The aforesaid view was reiterated in *Balwant Singh (Dead) v. Jagdish Singh*, (2010) 8 SCC 685, wherein this Court held that:

25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. *Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.* Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. (emphasis supplied)

18. The Court in the above-mentioned cases, highlighted upon the importance introducing the concept of "reasonableness" while giving the Clause "sufficient cause" a liberal interpretation. In furtherance of the same, this Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and the same is attributable to the party's inaction and negligence, the Courts have to take a strict approach so as to protect the substantial rights of the parties.

19. The aforesaid view was taken by this Court in the case of *Maniben Devraj Shah v. Municipal*

Corporation of Brihan Mumbai, (2012) 5 SCC 157 wherein the Court held that:

23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power Under Section 5 of the Limitation Act and other similar statutes, *the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. *If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. (emphasis supplied).*

22. Undoubtedly, the statute has granted the Courts with discretionary powers to condone the delay, however at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of "sufficient cause". Although there exists no strait jacket formula for the Courts to condone delay, but the Courts must not only take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that, the Courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this Court shall refrain from exercising the aforesaid discretionary relief."

In ***University of Delhi v. Union of India & Ors.*** reported in **2020(13) SCC 745** the Hon'ble Supreme Court upheld the order passed by Division Bench of

the High Court dismissing the LPA on the ground of delay of 916 days, with the following observations:

“23.. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation. In the case of Katiji (Supra) the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 per cent.

24. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the Appellant is public

body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the Respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified.”

The lethargy seems to have crept in the administration as they believe that justice oriented liberal view approach would steer them away irrespective of the quality of explanation offered for the delay since it is a state or a government body. They take things for granted. It is as if grace is the rule and denial would be an exception. A time has come for them to realise that they stand on the same footing and they are accountable for their conduct. Persons responsible for the delayed filing are let off even without caution. This indifferent, casual and lethargic attitude of the state or government bodies have been seriously deprecated in ***Postmaster General v. Living Media (India) Ltd.***

[2012 (3) SCC 563] wherein it is held as hereunder:
(SCC p.574, paragraphs 28-29).

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

The culpable negligence on the part of the appellant to conduct the matter cannot be condoned. In our view, justice should be evenly balanced. The negligent conduct of the Union of India is manifest at every stage

of the proceeding. An extremely casual approach is discernible from the explanations offered by the appellant for delayed filing of the appeal. Any liberal approach would result in injustice to the award holders, who have lost their lands almost 25 years back and by reason of the pendency of the proceeding they are deprived of their dues.

In view of such inexcusable delay a valuable right has accrued in favour of the award holder. Inextricable delay in preferring the appeal does not call for any sympathetic view to be taken by the appellant merely because it is Union of India.

Under such circumstances, we dismiss the application for condonation of delay. Consequently, the appeal stands rejected as time barred.

The appellant is directed to deposit the entire decretal dues with the executing court within two weeks from date. The execution court is directed to disburse the amount to the award holder on or before September 30, 2022.

In view of rejection of the memorandum of appeal, nothing remains in the application for stay filed under CAN 2 of 2019 (Old No. CAN 781 of 2019) and the same is also dismissed.

There will be no order as to costs.

The department is directed to communicate this order to the respondent/claimant by registered speed post with acknowledgment due within one week from date.

A copy of this order shall also be communicated to the learned Additional District Judge, 2nd Court, Balurghat, Dakshin Dinajpur for information and doing the needful.

It appears that till date in view of the pendency of the appeal and application, the award holder was unable to receive the benefit of the enhanced compensation as determined by the Additional District Judge, 2nd Court, Balurghat, Dakshin Dinajpur on 30.8.2011.

The application being CAN 757 of 2019 is dismissed.

(Soumen Sen, J.)

(Aparba Sinha Ray, J)