



2025:DHC:451-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO (COMM) 25/2025 & CM APPL No. 4372/2025, CM APPL No. 4373/2025****NAGAR PALIKA, NOKHA**

...Appellant

Through: Mr. Shashank Khurana , Mr. Deepak Verma, Mr. Vishal and Mr. Abheesht Sharma, Advocates.

versus

M/s Enviro Infra Engineers Pvt. Ltd

...Respondent

Through: None

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Date of Decision: 23rd January, 2025**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****TUSHAR RAO GEDELA, J : (ORAL)****CM. APPL. 4371/2025**

1. This is an application under section 5 of the Limitation Act, 1963 read with section 151 of the Code of Civil Procedure, 1908 on behalf of the applicant/appellant seeking condonation of delay of 289 days in filing the present appeal.

2. We have perused the contents of para 3, 4 and 5 of the application wherein the applicant/appellant has outlined reasons forming “*sufficient cause*” to condone the delay in filing the accompanying appeal. It would be apposite to extract the relevant paragraphs which read thus:-

“3. That it is respectfully submitted that due to a lapse in communication between the erstwhile counsel and the Appellant, who is represented by the Executive Officer, the final order and the impugned



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judgment dated 24.01.2024 were not duly communicated, resulting in the present delay. It is further submitted that subsequent to the passing of the final order, three Executive Officers namely Mr. Narendra Baperia (Period- 24.01.2024 – 27.02.2024), Ms. Vinita Kumhar (Period- 27.02.2024 – 11.07.2024) and Mr. Avinash Sharma (Period- 11.07.2024 - Present) who represented the Appellant borne the office. Due to the continuous substitution, the information pertaining to the aforementioned final order was not communicated to the newly appointed Executive Officers. This miscommunication occurred when the Executive Officers, upon intending to take necessary steps in the present matter, were substituted by a different Executive Officer as mentioned.

4. That it is further submitted that the Appellant became aware of the final order dated 24.01.2024 only upon the passing of the attachment order dated 18.09.2024, concerning Bikaner House, by the learned District Judge, Patiala House Courts, New Delhi, which was subsequently conveyed by the State of Rajasthan to the Appellant.

5. The delay in filing the process fee was neither intentional nor deliberate but occurred due to the aforesaid reasons.”

3. The explanation stated above, to say the least, do not even constitute a reason much less a “*sufficient cause*” to condone the immense delay in filling the accompanying appeal. At best, the contents would constitute and demonstrate some negligence on the part of the officials. It is not disputed that the applicant/appellant is a body corporate and cannot wriggle out of the burden cast on it to take appropriate and immediate steps to safeguard its interests. Having neglected to take appropriate steps in time, the applicant/appellant cannot place blame on its officials to wriggle out of such controversy.

4. The petitioner relied upon the judgement of the Hon’ble Supreme Court in ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private limited*** reported in (2021) 6 SCC 460, to submit that delay in filing an appeal under section 37 of the Arbitration and



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Conciliation Act, 1996 (hereinafter referred to as “the Act”) can be condoned by the appellate court.

5. There is no quarrel with the said ratio, however, it cannot be applied like Euclid’s Theorem to every case without first examining the facts obtaining in each case. In the present case, there is a long delay of 289 days beyond the 60 day period provided for filing an appeal under section 13(1A) of the Commercial Courts Act, 2015. There is no explanation worth the name contained in this application apart from some negligence on part of the officials. We are not satisfied with the sufficiency of cause and thus, the decision relied upon would not be applicable to the present case.

6. We are fortified in our view by the ratio laid in the judgement passed by the Hon’ble Supreme Court in ***State of M.P. v. Bherulal***, reported in **(2020) 10 SCC 654** which held as under:-

“3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAO v. Katiji [LAO v. Katiji, (1987) 2 SCC 107]]. This position is more than elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd. [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] wherein the Court observed as under : (Postmaster General case [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] , SCC pp. 573-74, paras 27-30)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.



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.*

30. *Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."*

7. For the said reasons, we do not accede to the request of the applicant/appellant to condone the delay. Hence the same is dismissed.

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8. Since the application seeking condonation of delay has been dismissed, the appeal too stands dismissed.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JANUARY 23, 2025/rl