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

+ **C.R.P. 307/2023**

ASHOK BHAWAN FLAT OWNERS/OCCUPANTS
ASSOCIATION

.....Petitioner

Through: Mr. S.K. Pal, Adv.
(through VC)

versus

RAM NIWAS GUPTA & ORS.Respondents

Through: Mr. Vijay Zarein, Adv. for
R2

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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28.02.2025

CM APPL. 12063/2025 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 307/2023, CM APPL. 12061/2025 (for amendment of cause title), CM APPL. 12062/2025 (for condonation of delay of 267 days for correction in memo of parties) & CM APPL. 55520/2023 (for condonation of delay)

3. CM APPL. 55520/2023 is filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 251 days in filing the accompanying petition against the orders dated 24.11.2022 and 04.08.2023 (hereafter '**impugned orders**'), passed by the learned Additional District Judge ('**ADJ**'), Saket Courts, Delhi, in CS DJ 465/20.

4. The suit is filed by the plaintiffs (Respondent Nos. 1 and 2) seeking a decree for possession in respect of the suit premises, that is, Flat No. B-1 & B-2, Basement, Ashok Bhawan, 93, Nehru Place, New Delhi.

5. It is claimed that the builder, who had constructed the

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multistorey building in which the concerned flats are situated, had allotted the same in favour of one Mr. C.L. Verma (HUF). After the death of Mr. Mr. C.L. Verma, the suit for partition between the legal heirs of Mr. C.L. Verma was decreed on the basis of settlement by this Court, whereafter, the legal heirs transferred their rights, title and interest in respect of the suit premises to the plaintiffs for valuable consideration. The transfer of the rights were also endorsed by the builder.

6. It was later found that the petitioner/ Defendant No.2, under the purported authority of the erstwhile owners, had let out the suit premises to Defendant No.1.

7. By the impugned order dated 24.11.2022, the learned ADJ dismissed the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'). It was argued that the plaintiffs were claiming their right in the suit property by way of an agreement to sell and no right or interest could be said to have accrued in favour of the plaintiffs on the sole basis of the same. It was observed by the learned ADJ that the suit property comes under the purview of Delhi Apartment Ownership Act, 1986, which permits transfer of ownership by way of endorsement of builder buyer agreement by the promoters, and the suit was thus not liable to be dismissed at this juncture.

8. The petitioner filed an application for review of the aforesaid order, which was dismissed by the learned ADJ by the impugned order dated 04.08.2023. It was observed that the review application was barred by time. The petitioner had pleaded that the review application had been filed pursuant to a new judgment of the Hon'ble Apex Court. It was noted that if the said judgment reiterated the settled proposition of law, then no



ground for review was made out and in case a new proposition of law had been expounded, the explanation to Order 47 of the CPC would bar the review.

9. The present petition was restored to its original position on the last date of hearing.

10. Undisputably, the question *qua* condonation of delay has to be decided at the outset.

11. The learned counsel for the petitioner submits that the delay accrued since the petitioner has to update the general body around the developments in the ongoing cases. He submits that only the board can move further on the litigations and the belated decision led to delay.

12. He submits that the petitioner was advised to file a review application as the Hon'ble Apex Court in the case of ***Ghanshyam v. Yogendra Rathi : (2023) 7 SCC 361*** held that an agreement to sell is not a document of transfer and as such, right or title in an immovable property do not stand transferred by mere execution of such a document.

13. He submits that the procedural delay of the petitioner association in preferring the present petition was neither intentional nor deliberate.

14. The learned counsel for Respondent No.2 vehemently opposed the condonation of delay and submits that no ground warranting the same is made out. He submits that the application fails to mention as to when the Management Committee of the Association was apprised of the impugned orders and what steps were taken to seek legal remedies during the interim period.

15. I have heard the counsel and perused the record.

16. In accordance with Section 5 of the Limitation Act, 1963, any appeal or application may be admitted beyond the prescribed
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period of limitation provided that there exists ‘sufficient cause’ that prevented the party from approaching the Court within the period of limitation.

17. In *Pathapati Subba Reddy v. LAO* : 2024 SCC OnLine SC 513, the Hon’ble Apex Court held that if applications for condoning inordinate delay are allowed, there would be no finality to the proceedings and litigations will be made immortal. The Hon’ble Court noted that the power to condone delay is discretionary in nature, and may not be exercised even in cases where sufficient cause is explained by the applicant and emphasised the need to draw an equilibrium between adopting a liberal approach and in implementing the statute of limitation, as it stands. The relevant portion of the judgement reads as under:

*“7.The law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium” i.e. it is for the general welfare that a period of limitation be put to litigation. **The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely.** Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.*

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*12.In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act **but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives ‘sufficient cause’ for not preferring the appeal within the period prescribed.** In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to*



establish 'sufficient cause' for not filing it within time. **The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.**

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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... 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.**"

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23. In *Basawaraj and Anr. vs. Special Land Acquisition Officer*, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. **It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.**

(emphasis supplied)

18. In the present case, it is not disputed that the petitioner association was aware of passing of the impugned order dated 24.11.2022. As pointed out by the learned counsel for Respondent No.2, the application for condonation of delay is bereft of any particulars as to when the General Body meeting was purportedly held and no board resolution has been placed on record either. Furthermore, it is unclear as to what steps were taken for calling a General Body meeting to initiate action against the impugned order dated 24.11.2022. Merely because the petitioner is an association, it cannot be allowed to prefer petitions belatedly, especially when the petitioner has failed to show that it had taken prompt steps to initiate action.



19. This Court also considers it apposite to take note of the conduct of the petitioner. The present petition was dismissed for non-prosecution on 26.02.2024. Thereafter, an application, being, CM APPL. 21229/2024, was moved by the petitioner seeking restoration of the present petition, which was also dismissed for non-prosecution thereafter on 11.09.2024. The order dated 11.09.2024 was subsequently recalled and the petition was restored to its original position on 17.12.2024.

20. In view of the above, considering the conduct of the petitioner as well as the lack of any sufficient cause in the application, this Court finds no ground to condone the delay in filing the accompanying petition. The application, being, CM APPL. 55520/2023, is therefore dismissed.

21. Consequently, the petition is dismissed on the ground of being barred by limitation. Pending applications also stand disposed of.

AMIT MAHAJAN, J

FEBRUARY 28, 2025