

Bench No.1.

Appeal No. (D) 194/2021

Lucknow Development Authority.

Vs.

Amit Yadav

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.

Hon'ble Mr. Rajiv Misra, Administrative Member.

1. Heard Shri Saurabh Misra, learned counsel for the applicant, and Sri Abhishek Yadav, learned counsel for the respondent, on the application for condonation of delay in filing the appeal.
2. The submission of learned counsel for the applicant is that the impugned order dated 26.11.2019 was uploaded on the webpage of the U.P. RERA and communicated to the parties through link on 26.11.2019. The certified copy of the order was applied on 29.12.2019 and the same was received on 03.01.2020. The limitation for filing the appeal was upto 25.01.2020. The appeal was filed online on 19.02.2021 and physical copy of the same was filed at the Tribunal on 22.02.2021 with a delay of about 387 days.
 - 2.1 The learned counsel for the applicant further submitted that the impugned order was for the first time communicated on 29.12.2019 when the officer of the applicant/appellant tried to get the status of the complaint no. LKO162/07/0863/2019 and immediately thereafter the certified copy of the impugned order was applied by the appellant. Thereafter the impugned order was produced before the Board of Members of the Lucknow Development Authority for further instructions and on direction of the concerned officer the appellant decided to challenge the impugned order before the Tribunal.
 - 2.2 It is further submitted that being a government body the applicant/appellant has a lengthy procedure to collect the details and to obtain permission for further proceedings. When all the documents were arranged by the concerned officer then the file was allotted to panel counsel but due to force majeure circumstance of Covid-19

pandemic the Central and State Government declared complete lockdown since 23rd March, 2020 which continued till 31st May, 2020. Thereafter, in the month of June, 2020 when offices reopened the applicant/appellant tried to handover the documents to panel counsel but failed to deliver due to strict restrictions and safety features on account of Covid-19 pandemic. In July 2020 the file along with demand draft of Rs.7,70,239/- and documents was handed over to the panel counsel, but the panel counsel made unnecessary delay in filing the appeal. Approximately 90 days passed away due to Covid-19 pandemic and further delay has been made by the panel counsel of the applicant/appellant.

- 2.3 It is further submitted that the applicant/appellant had to arrange documents from different departments of the appellant and also approvals were required to be obtained at various levels, which took considerable time.
- 2.4 The learned counsel for the applicant/appellant, in support of his submissions placed reliance on the judgments passed by Hon'ble Supreme Court in (i) **B. Madhuri Goud Vs. Damodar Reddy, reported in (2012) 12 SCC 693**, (ii) **G. Ramegowda, Major Vs. Spl. Land Acquisition Officer, (1988)2 SCC 142**, (iii) **State of Haryana Vs. Chandra Mani, (1996) 3 SCC 132**, and (iv) **State of Manipur Vs. Koting Lamkang, (2019) 10 SCC 408** and submitted that the power to condone the delay in approaching the court by late filing of cases has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits and the expression 'sufficient cause' used in the proviso employed by the legislature in the Limitation Act is adequately flexible to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice.
- 2.5 Further submission of learned counsel for the applicant is that generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigation to which Government is a party, there is yet another

aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. Moreover on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and enumerated process of pushing the files from table to table and keeping it on table for considerable time causing delay – intentional or otherwise – is a routine.

- 2.6 Learned counsel for the applicant lastly submitted that in view of the facts and circumstances mentioned in the affidavit in support of application for condonation of delay, the delay deserves to be condoned, in the interest of justice, otherwise the applicant will suffer irreparable loss and injury.
3. Learned counsel for the respondent, while opposing the application for condonation of delay, submitted that the applicant was fully aware about the impugned order as it applied for certified copy of the impugned order on 29.12.2019 and received the same on 03.01.2020 and even having a large legal establishment headed by Legal Advisor, who is of the rank of Additional District Judge and battery of panel lawyers, the applicant could not file appeal in time.
 - 3.1 Learned counsel for the respondent further submitted that being State instrumentality, the applicant does not have any privilege for not filing the appeal within time.
 - 3.2 Learned counsel for the respondent also submitted that the delay on the part of the applicant is intentional. The whole functioning of the applicant is online. The applicant itself admitted that its panel counsel has made unnecessary delay in filing the appeal. The respondent should

not be made to suffer on account of delay on the part of counsel for the applicant or its officials.

- 4.. We have considered the submission of learned counsels for the parties and gone through the record.
5. Before we proceed to examine the cause shown by the applicant regarding filing of present case with the delay of 406 days, we deem it proper to examine the issue of condonation of delay, bonafides, sufficient cause shown, and the factors required to be considered in the light of various pronouncement of Hon'ble Apex Court where the principles are culled out on the issue of condonation of delay.
6. In the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013)12 SCC 649]***, Hon'ble Apex Court enunciated broad principles in paras 21 and 22 as follows:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalize injustice but are obliged to remove injustice.

21.2 (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so

that in the ultimate eventuate there is no real failure of justice.

21.7(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed of course, within legal parameters.”

Thus, broadly speaking, the approach, while considering a prayer or application seeking condonation of delay in instituting any proceedings, which should be adopted by a court or a judicial forum is that it should not proceed on the premise or assumption that delay in approaching the court is always deliberate and that the primary function of the court or of an adjudicatory authority is to adjudicate the dispute, rather than to shut its door to a litigant or a party.

7. The Apex Court in ***Ramlal, Motilal and Chhotelal Vs/ Rewa Coalfields Ltd. 1962 (2) SCR 762: AIR 1962 SC 361*** while construing Section 5 of the Limitation Act 1963 has held that the Court should bear in mind two important considerations while dealing with the explanation for condonation of delay. Firstly, that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties and this legal right which accrues to the decree holder by lapse of time should not be light-heartedly disturbed, and secondly, that if sufficient cause for the delay is shown, discretion is given to the Court to condone the delay. The Apex Court, however, has further ruled that:-

“It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condonation of delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that

diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.”

8. In ***Arjun Singh V. Mohindra Kumar AIR 1964 SC 993***, the Hon’ble Supreme Court explained the difference between a “good cause” and a “sufficient cause” and observed that every sufficient cause is a good cause and vice versa. However if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree proof than that of sufficient cause.
9. Further the expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (*Vide: Madanlal V. Shyamlal AIR 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu and Ors. V. Gobardhan Sao and Ors. AIR 2002 SC 120*).
10. In ***Basawaaj and Ors V. The Spl. Land Acquisition Officer: (2013) 14 SCC 81***, the Hon'ble Apex Court in para 9 & 15 was pleased to observe that:-

“9. Sufficient cause is the cause for which Defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the Court

concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature."

11. In ***Balwant Singh (dead) Vs. Jagdish Singh & Ors [(2010) 8 SCC 685]***, the Hon'ble Supreme Court explained the expression "sufficient cause" to mean the presence of legal and adequate reasons.
12. The Hon'ble Apex Court in the case of ***University of Delhi Vs. Union of India & Ors.*** [Civil Appeal Nos. 9488-9489 of 2019 arising out of SLP (Civil) Nos. 5581-5582 of 2019] in the month of December, 2019 while dismissing the appeal observed that the learned single Judge was not only justified in holding that the writ petition inter alia is hit by delay and laches but the decision of Division Bench in dismissing the LPA on the ground of delay of 916 days is also justified and the orders do not call for any interference, while examining the judgment of ***Dehri Rohtas Light Railway Company Ltd. Vs. District Board, Bhojpur & Ors (1992)2 SCC 598*** wherein it has been indicated that the real test to determine the delay is that the petitioner should

come to the Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence, further in the 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.

The Hon'ble Apex Court further opined that 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 and in that back ground 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 facts of the situation. It has been further observed that in the case of **Katiji (Collector Land Acquisition Vs. Mst. Katiji & ors.)** decided by Hon'ble Supreme Court on 19.02.1987, 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 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.

The Hon'ble Apex Court was further pleased to observe that in the matter of condonation of delay and laches, the well accepted position is that the accrued right of the opposite party cannot be lightly dealt with.

13. Further, Hon'ble Supreme Court in the case of ***Postmaster General and others Vs. Living Media India and another (2012)***³ Supreme Court **Cases 563** was pleased to hold that law of limitation binds everybody equally and condonation of delay is an exception and should not be used as an anticipated benefit for any party. Paragraphs 27 to 30 of the said judgment are as follows:-

"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 bonafide, 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 bonafide 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 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. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

14. Admittedly the impugned order dated 26.11.2019 was uploaded on the website of the RERA on the same day i.e. 26.11.2019. The limitation

for filing the appeal was upto 25.01.2020 and the appeal was filed on 20.02.2021 after a delay of 387 days. As per endorsement on the certified copy of the impugned order, the applicant applied for certified copy of the impugned order on 29.12.2019 and the same was received by the applicant on 03.01.2020, much before the expiry of limitation for filing appeal.

15. As far as the claim of learned counsel for the applicant due to Covid-19 pandemic and on account of panel counsel is concerned, the limitation for filing the present appeal was upto 25.01.2020 and the lockdown was imposed in the month of March 2020. The Hon'ble Supreme Court in SMW(C) No. 3 of 2020 in re: Cognizance for Extension of Limitation vide order dated 23.03.2020 was pleased to extend the period of limitation in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) with effect from 15.03.2020 till further orders and the said period comes after 51 days from the date of expiry of the period of limitation. In our considered view no benefit of the said order of Hon'ble Supreme Court would be admissible to the applicant as the limitation for filing the present appeal was upto 25.01.2020.
16. At this stage we would like to refer the judgment of Hon'ble Supreme Court passed in SLP No.2054-2055/2022 ***Lingeswaran etc. Vs. Thirunagalingam*** decided on 25th February, 2022, reported in 2022 LiveLaw (SC)227 wherein the Hon'ble Supreme Court has been pleased to observe that the court has no power to extend the period of limitation on equitable grounds. Para 5 of the aforesaid judgment reads as follows:--

“5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even

after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. 5.1 In the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157, in paragraph 14, it is observed and held as under: “The law of limitation is founded on public policy. The limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.”

17. The Hon’ble Supreme Court in the case of ***Estate Officer, Haryana Urban Development Authority and another Vs. Gopi Chand Atreja, (2019)4 SCC 612*** vide paras 13,14, and 15 has been pleased to observe that in case Incharge of Legal Cell failed to discharge his duty promptly and with due diligence despite of availability of all facilities and infrastructure, he should be made answerable for lapse on his part and make good the loss suffered by the appellant. Paras 13,14 and 15 of the aforesaid judgment read as follows:--

“13. In our view, it was equally the duty of the appellants (their legal managers) to see that the appeal be filed in time.

If the appellants noticed that their lawyer was not taking interest in attending to the brief in question, then they should have immediately engaged some other lawyer to ensure that the appeal be filed in time by another lawyer.

14. In our view, it is a clear case where the appellant HUDA, i.e., their officers, who were incharge of the legal cell failed to discharge their duty assigned to them promptly and with due diligence despite availability of all facilities and infrastructure. In such circumstances, the officers in-charge of the case should be made answerable for the lapse on their part and make good the loss suffered by the appellants HUDA.

15. A delay of 1942 days (4 years 6 months), in our view, is wholly inordinate and the cause pleaded for its condonation is equally unexplained by the appellants. In any case, the explanation given does not constitute a sufficient cause within the meaning of Section 5 of the Limitation Act. It was, therefore, rightly not condoned by the High Court and we concur with the finding of the High Court.”

18. On the basis of the aforesaid analysis we have no hesitation in observing that the applicant failed to show sufficient cause for condoning the delay of 387 days which could warrant us to exercise our discretion for the purpose of condoning the delay after appreciating the same.
19. Accordingly, the application for condonation of delay is **rejected**. Consequently Appeal No. (D) 194 of 2021 is also **dismissed**.

(Rajiv Misra)

(D. K. Arora)

Dated: 10.03.2022
Shakir.