

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 2

APPEAL-508/2021

SAURABH MURARKA

.....Appellant

Versus

LOGIX INFRASTRUCTURE PVT.LTD.

.....Respondent

Counsel for Appellant

Counsel for Respondent

SAURABH MISRA

VIKAS KUMAR VERMA

KRISHNA KUMAR SINGH

Hon'ble Mr. T.B. Singh, Judicial Member

Hon'ble Mr. K.K. Jain, Technical Member

**(DISPOSAL OF AN APPLICATION FOR CONDONATION OF
DELAY SUPPORTED WITH AFFIDAVIT DATED 20.07.2021 AND
ITS OBJECTION DATED 31.12.2021)**

On behalf of applicant an application for condonation of delay supported with affidavit dated 20.07.2021 has been filed with the following submissions:

1. That the impugned order was passed on 29.08.2019 by the learned Authority and the same was uploaded on 04.09.2019.
- 1.1. That it is pertinent to mention here that the order was passed by the learned Authority on 29.08.2019 but the order was not communicated to the appellant.
- 1.2 That in the month of December, 2019 when the appellant tried to get status of the order then he came to know that the order was passed on 29.08.2019 and uploaded on 04.09.2019.

- 1.3 That as soon as the appellant became aware of the order he sent a legal notice to the builder dated 16.12.2019 to which the builder did not respond and kept on delaying the matter.
- 1.4 That thereafter the appellant wrote mails in January and February 2020 to the respondent no.1 but there was no response from them.
- 1.5 That thereafter due to pandemic of Covid-19, the Central and State Government had declared complete lockdown and due to said lockdown all offices, court, tribunals and transport were completely closed till June, 2021.
- 1.6 That further due to pandemic of Covid-19, it was not safe to travel in public transport or other city, however, the deponent was also infected by Covid-19 infection and therefore, he was quarantined for a long period.
- 1.7 That when the appellant had recovered from Covid-19 immediate thereafter he tried to get the all relevant documents of the case and approached to the present counsel to challenge the impugned judgment and order dated 29.08.2019 before the Hon'ble Appellate Tribunal and therefore, some time passed away in arranging the necessary documents for appeal.
- 1.8 That the appellant applied for the certified copy of the order on 13.01.2021 which was received by the appellant on 19.01.2021.
- 1.9 That due to instructions and safety features of Covid-19, it was very difficult to the appellant to meet with the persons and to arrange the documents but inspite of this the documents arranged by the appellant and same was

delivered to the present counsel. Thereafter some time passed in preparation of application and therefore, the present appeal has been filed now with delay application.

1.10 That in view of above facts and circumstances and force majeure of Covid-19, the appellant has a sufficient reason to condone the delay.

1.11 That further the Hon'ble Supreme Court in the case of **B. Madhuri Goud vs. Damodar Reddy reported in (2012) 12 SCC 693** has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with the application for condonation of delay. Substantial justice being paramount and pivotal the technical considerations should not come in the way of substantial justice.

1.12 That the Hon'ble Supreme Court in **Suo Motu Writ (Civil) No. 3 of 2020 in Re: Cognizance for Extension of Limitation** on 08.03.2021 has passed the following orders:

- “1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.*
- 2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of*

limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply”.

1.13 That further the Hon’ble Supreme Court in **Suo Motu Writ (Civil) No. 3 of 2020 In RE: Cognizance For Extension of Limitation** on 08.03.2021 again passed the orders to further extend the limitation from 14.03.2021 till further orders.

1.14 That in view of the above mentioned facts and circumstances the appellant has sufficient reason to condone the delay and therefore, it is most graciously prayed before the Hon’ble Appellate Tribunal please to allow the present condonation of delay application and condone the delay of approx. 622 days in filing appeal in favour of the appellant.

2. **Inspite of sufficient service** of notice no one appeared on behalf of respondent; hence no objection has been filed against delay condonation application.

3. **We heard the learned counsel** for the appellant and perused the records.

4. The learned counsel for appellant submitted that after coming to know about the impugned order dated 29.08.2019 on 04.09.2019 he sent a legal notice to the builder to which builder did not respond. Thereafter Covid-19 Pandemic caused hindrances in filing the instant appeal. Thus, the delay caused in filing the instant appeal is neither intentional nor deliberate hence delay condonation application be allowed.

The learned counsel cited the following cases in support of his submission:-

- (i) **B. Madhuri Goud vs. Damodar Reddy reported in (2012) 12 SCC 693; and**
- (ii) **Suo Motu Writ (Civil) No. 3 of 2020 In RE: Cognizance For Extension of Limitation.**

At the outset, it is desirable to have a look upon Section 44(2) of the Act, 2016 which is reproduced herein below:

“44 (2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days, if it is satisfied that there was sufficient cause for not filing it within that period.”

From the aforesaid provisions of Section 44 (2), the following inferences can be drawn:

- i. The period of limitation is sixty days and the appeal shall be preferred within a period of sixty days.
- ii. The period of limitation shall be counted from the date on which a copy of the impugned direction or order or decision given by the authority or the adjudicating officer is received.
- iii. The expression-“The appeal shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision..... is received”.
- iv. The appeal may be filed even after expiry of a period of sixty days, if there exists sufficient cause for not filing the same within that period i.e. sixty days.

In the present case, the instant appeal has been filed on 22.07.2021 i.e. after total delay of approximately **621** days, if it is counted from the date of uploading the impugned order on 04.09.2019 and after **excluding the period** of limitation. But before Covid-19 Pandemic there was **131 days** with the appellant, if we calculate the delay period from the date of uploading the impugned order i.e. 04.09.2019 and after excluding the limitation period of 60 days as prescribed under Section 44(2) of the Act.

We perused the case of **Suo Motu Petition Writ (Civil) No. 3 of 2020**, decided on 08.03.2020 by Hon'ble Apex Court, wherein due to the onset of Covid-19 Pandemic the Hon'ble Supreme Court, taking Suo Motu cognizance of the situation arising from the difficulties faced by the litigants across the Country has observed:

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
3. *The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods 2 | Page prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*
4. *The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be*

allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

From the above observation, it is obvious that only in those case in which period of limitation has expired during the period between 15.03.2020 to 14.03.2021, the litigants are entitled to get the additional (balance) period of limitation to file the suit/appeal after 14.03.2021, and accordingly the limitation period shall be calculated.

Later on the afore-stated period was extended from 15.03.2021 till 14.08.2021 vide order dated 23.09.2021 passed by Hon’ble Apex Court in Misc. Appeal No. 665 of 2021. This period has been further extended till 28.02.2022 in case of in re: **Cognizance for extension** of limitation by Hon’ble Supreme Court of India in Misc. Application Nos. 665 of 2021 and 21 of 2022.

But in the present case the above propositions do not apply, because in the instant case before Covid-19 Pandemic i.e. till 14.03.2020 there was 131 days with the appellant when we calculate the delay period from the date of uploading the impugned order on 04.09.2019 and after excluding the limitation period of 60 days as prescribed under Section 44(2) of the Act, but it could not file the instant appeal in time. Why the instant appeal has not been preferred within the time, applicant has failed to give any sufficient reason for the same as it is evident from the afore-stated discussion.

The learned counsel for the applicant also drew our attention to the principles laid down in the case of **B. Madhuri Goud vs. Damodar Reddy, (2012) 12 SCC 693** and submitted that in this case the Hon’ble Supreme Court has laid down that - “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 legalise injustice but are obliged to remove injustice.” Substantial Justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis”.

No doubt, it is settled law that there should be a liberal and pragmatic approach while dealing with the limitation application as the Hon’ble Apex Court has held in the case of **B. Madhuri Goud vs. Damodar Reddy, (2012) 12 SCC 693**.

But it is also settled proposition of law that the concept of liberal approach, while dealing with the application for condonation of delay does not mean that party seeking condonation of delay is exempted to **prove that “sufficient cause exists” for condonation of delay**.

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.

Hon’ble Supreme Court in the matter of **Brijesh Kumar and others vs. State of Harayana and other, 2014(11) SCC 351** has laid down that:

“The Privy Council in **General Fire and Life Assurance Corporation Ltd. vs. Janmahomed Abdul Rahim, AIR 1941 PC 6**, relied upon the writings of Mr. Mitra in Tagore Law Lecturers 1932 wherein it has been said that “a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as a Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognized by law.

In the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy And Others (2013) 12 SCC 64**, on which the

reliance has also been placed upon by the learned counsel for applicant, the Hon'ble Supreme Court has already laid down as below:

(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 legalise injustice but are obliged to remove injustice.

(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.

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

(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.

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

(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.

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

(viii). There is a distinction between inordinate delay and 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.

(ix). The conduct, behaviour 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.

(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.

(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.

(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.

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

(xiv). 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.

(xv). 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.

(xvi). 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.

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

Thus, from the above observations it is itself clear that- If the explanation offered (for delay) is concocted or the grounds stated in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation.

The Hon'ble Apex Court in the case of **M/s Dehri Rohtas Light Railway Company Ltd. vs. District Board, Bhojpu & Ors (1992) 2 SCC 598** observed 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.

Duty of Court goes to the root of the matter. If suit, appeal or application is beyond limitation, Court or Adjudicating Authority has no jurisdiction; power or authority to entertain the matter and decide it on merits. The Court has an independent duty to look into aspect of limitation even though limitation has not been set up as a defence. [**Noharlal Verma vs. Distt. Co-operative Central Bank Ltd., (2008) 14 SCC 445**].

In Basawaraj vs. Land Acquisition officer, (2013) 14 SCC 81, the Hon'ble Supreme Court has held as below:

The term, "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".

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. (*See also: Manindra Land and Building Corpn. Ltd. V. Bhutnath Banerjee, AIR 1964 SC 1336, Mata Din v. A. Narayanan, (1969) 2 SCC 770: AIR 1970 SC 1953, Parimal v. Veena, (2011) 3 SCC 545: (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150 and Maniben Devraj Shah v. Municipal Corpn. Of Brihan Mumbai, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629.*)

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. (See also: Madanlal v. Shyamlal, (2002) 1 SCC 535 : AIR 2002 SC 100 and Ram Nath Sao v. Gobardhan Sao, (2002) 3 SCC 195 : AIR 2002 SC 1201).

In the same case (Basawaraj case) the Court has also held:

It is a settled legal proposition that 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. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” 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. **The legal maxim “*dura lex sed lex*” which means “the law is hard but it is the law”, stands attracted in such a situation”.** It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

The Hon’ble Court has further observed:

“The law on the issue can be summarised 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 a 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 tantamounts to showing utter disregard to the legislature.”

In *P. Ramachandra Rao v. State of Karnataka*, (2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856, the Hon'ble Supreme Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701 (also noted in Baswaraj case).

In ***P.K. Ram Chandram v. State of Kerala*, (1997) 7 SCC 556**, the Hon'ble Court observed:

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigours when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds.” [page 558 para 6].

In ***Ramlal vs. Rewa Coalfields Ltd.* 1962 (2) SCR 762: AIR 1962 SC 361** the Hon'ble Apex Court while construing Section 5 of the Limitation Act 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 S.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.

In *Arjun Singh vs. Mohindra Kumar: AIR 1964 SC 993* the Hon'ble Apex 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 of proof than that of "sufficient cause".

In brief, the expression "sufficient cause" means that the party should not have acted in a negligent manner and lightly. The grounds mentioned in the application should be genuine. In the instant appeal, the applicant was not vigilant at all to file the instant appeal in time.

Thus, in our view the explanation given by the applicant-Lucknow Development Authority for delay of approximately **131 days** before Covid and total delay of 621 days is vague and fanciful. Hence the application for condonation of delay in filing the instant appeal is liable to be rejected.

ORDER

The application dated **20.07.2021** filed on behalf of appellant for condonation of delay in filing the instant Appeal No. (D) 508/2021 (Saurabh Murarka vs. Logix Infrastructure) is rejected and consequently the appeal also stands dismissed.

Let file be consigned to record room.

Dec.08, 2022
Vks

(K.K. Jain)
Technical Member
U.P. Real Estate

(T.B. Singh)
Judicial Member
U.P. Real Estate

Appellate Tribunal, Indira Bhawan,
Lucknow

Appellate Tribunal, Indira Bhawan,
Lucknow

Judgment, signed, dated and pronounced in the open Court.

Dec. 08, 2022
Vks
(K.K. Jain)
Technical Member
U.P. Real Estate
Appellate Tribunal, Indira Bhawan,
Lucknow

(T.B. Singh)
Judicial Member
U.P. Real Estate
Appellate Tribunal, Indira Bhawan,
Lucknow

(K.K. Jain)

(T.B. Singh)

Dated: 08.12.2022
VIJAYKUMAR