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SUPREME COURT

G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.

Maniben Devraj Shah v. Municipal Corporation Of Brihan Mumbai

Civil Appeal Nos. 2970-2971 of 2012

09.04.2012

(i) limitation Act (1963), S.5 – State – Public Interest – In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

(ii) Limitation Act (1963), S.5 – Sufficient cause – In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

Held, 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. 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. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest. [Para 18]

Held, unfortunately the learned Single Judge of the High Court altogether ignored the gapping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of judgment for more than 7 years. The cause shown by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the learned Single Judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act. [Para 22]

Petitioner Counsel: Mr. PANKAJ KUMAR MISHRA, Mr. A.S. BHASME Respondent Counsel: Mrs. SUCHITRA ATUL CHITALE

JUDGMENT

G. S. SINGHVI, J. :- Whether the cause shown by Municipal Corporation of Brihan Mumbai (for short, 'the Corporation') for condonation of 7 years and 108 days delay in filing appeals against judgments and decrees dated 2.5.2003 passed by the City Civil Court (hereinafter referred to as 'the trial Court') in L.C. Suit Nos. 2726, 2727, 2728 of 1999 was sufficient cause within the meaning of Section 5 of the Limitation Act and the learned Single Judge of the Bombay High Court was justified in condoning the delay is the question which arises for consideration in these appeals.

2. At the outset, it deserves to be mentioned that the respondent had withdrawn one of the three appeals filed before the High Court and, as such, the impugned order makes a reference to the two appeals only.

3. The appellants filed suits for grant of a declaration that notices issued by the Corporation under Section 314 of the Mumbai Municipal Corporation Act, 1888 (for short, 'the Act') for demolition of the properties specified in the plaints are illegal and not binding on them. They pleaded that the action taken by the Corporation is discriminatory and liable to be annulled because some persons whose structures were taken for road widening were allowed to construct mezzanine floor in the remaining portions of their respective properties and were also allotted alternative accommodation in the new building but they were not given similar benefit. The appellants further pleaded that they had entered into development agreements with Shamji D. Shah and Popatbhai Baghbhai Bharwad for developing the property and they will construct market for and on behalf of the Corporation. They prayed for issue of a direction to the respondent to provide shops in the market proposed to be constructed on C.T.S. No.997, Near Purnapragya High School, Bharucha Marg, Dahisar (E), Bombay.

4. In the written statement filed on behalf of the Corporation, an objection was taken to the maintainability of the suit on the ground that notice under Section 527 of the Act had not been given by the appellants. On merits, it was pleaded that the appellants had raised construction on a portion of the road and it had become necessary to demolish the same for widening the existing road.

5. On the pleadings of the parties the trial Court framed identical issues in all the suits. For the sake of reference, the issues framed in LC Suit No. 2726 of 1999 titled Smt. Maniben Devraj Shah v. The Municipal Corporation of Greater Bombay are reproduced below:

	ISSUES	findings
1.	Does the plaintiff prove that notice issued u/s.314of BMC Act is illegal, bad in law, malafides and inexcitable?	In the affirmative
2.	Does the plaintiff provethat she is entitled foralternate accommodation in lieu of structure affected by road widening?	In the affirmative
3.	Does the plaintiff provethat suit is maintainable for the want of notice u/s. 527 of BMC Act?	In the affirmative
4.	Whether the plaintiff isentitled for any relief?	As per finalorder
5.	What order?	As per finalorder"

6. After considering the pleadings of the parties and evidence produced by them, the trial Court decreed the suits by separate but identical judgments dated 2.5.2003.

7. The Corporation did not challenge the judgments of the trial Court within the prescribed period of limitation and filed appeals sometime in September, 2010 along with the applications for condonation of 7 years and 108 days delay. In support of its prayer for condonation of delay the Corporation also filed the affidavits of Shri Ranindra Y. Sirsikar, Junior Law Officer. For the sake of reference, paragraph 3 of the application for condonation of delay and paragraphs 2, 3 and 5 of the affidavit of Shri Ranindra Y. Sirsikar filed in first appeal

No. 3691 of 2010 titled Municipal Corporation of Brihan Mumbai v. Smt. Maniben Devraj Shah are reproduced below:

APPLICATION FOR CONDONATION OF DELAY

"3) The applicants herein have filed the present first appeal against the order dated 2.5.2003 and applied for certified copy of judgment on 23.8.2010 and same was made available on 6.9.2010 and collected on 6.9.2010. The applicant corporation being the administrative and statutory body, certain requisitions and formalities for preferring an first appeal in the Hon'ble High Court has to be complied with. The applicant submit that the said papers which were required for the preferring the first appeal were misplaced and not traceable in spite of good efforts. The applicant submit that meanwhile concerned advocate who has appeared in the above suit was transferred from the city civil section to criminal section in the month of June 2004 and therefore loss the tract of matter and the said first appeal remained to be filed due to oversight and heavy work load. The applicant submit that concerned advocate was also transferred from criminal section to high court suit section in the month of October, 2005. The applicant submit that the concerned advocate who has appeared in the suit came to know that plaintiff has fraudulently obtained alternate accommodation under order passed by Hon'ble City Civil Court on 2.5.2003 even when respondent was given permission for constructing the mezzanine floor to the extent of structure affected by road widening. The applicant say and submit that the concerned development and thereafter immediate steps were taken to reconstruct the brief and preferred the first appeal immediately. The applicant therefore say and submit that there is delay of days in preferring the present first appeal. The applicant submit that delay in preferring the appeal is not deliberate and intentional. The same is caused due to circumstances narrated herein above. Therefore delay be condoned."

AFFIDAVIT OF SHRI RANINDRA Y. SIRSIKAR

"2. I say that the present suits bearing No. (1) 2726 of 1999, 2727 of 1999 and 2728 of 1999 was decreed on 02.05.2003 by Hon'ble City Civil Court. I say that I was on leave from 30.4.2003 till 11.5.2003. I resumed my office by 12.5.2003. A copy of leave application is annexed herewith and marked as Exhibit-A. I say that as per the office procedure, the necessary intimation was also forwarded to the concerned department and informed them about the court orders dated 2.5.2003. A copy of dispatch extract regarding intimation to the concerned ward on 12.5.2003 is annexed herewith and marked as Exhibit B. I say that thereafter, from the record it seems that concerned department misplaced the papers and were not traceable so nobody followed up on the matter. I say that from 2.1.2004, I was transferred to Miscellaneous Court. A copy of the office order regarding transfer is annexed and marked as Exhibit – C. I say that I was again transferred from Miscellaneous Court to Criminal Court from 5.6.2004. A copy of the office order regarding transfer is annexed herewith and marked as Exhibit – D. I was with the Criminal Section from 5.6.2004 to 28.9.2005. I was again transferred from Criminal Court to High Court Original Side w.e.f. 28.9.2005 till date. A copy of the office order regarding transfer is annexed herewith and market as Exhibit – E. I say that in view of the facts, I was transferred from City Civil Court, and various courts, I could not follow up with the matter.

3. I say that in the instant case, the Local Councillor Shri Prakash Karkar wrote a letter on 20.7.2010 to the concerned Additional Municipal Commissioner requesting for joint meeting regarding widening of road and expediting the development and construction of Municipal Market, i.e., property under reference. A copy of letter dt. 20.7.2010 of Local Councillor Shri Prakash Karkar is annexed herewith and marked as Exhibit – F. I say that accordingly joint meeting was held in the Chamber of Addl. M.C. on 2.8.2010, when all concerned officers along with Jt. Law Officer (City Civil Court Section) of Legal Department of the appellant was also present in the said meeting. In the course of said meeting, it came to the notice that the respondents are claiming the right of alternative accommodation pursuant to impugned order in view of that matter, respective Addl. Municipal Commissioner directed Jt. Law Officer (City Civil Court Section) of Legal Department to study entire matters and also ascertain above appeal and its stage against the judgment and order dated 2.5.2003 passed by City Civil Court. A copy of minutes dated 2.8.2010 is annexed herewith and marked as Exhibit – G.

5. I say that though papers were misplaced and not traceable, I personally inquired with the staff of High Court (Appellate Side High Court Section of the Legal Department) on 17.8.2010, whether any appeal has been filed against the order and judgment dated 2.5.2003. I came to know on 19.8.2010, that appeal has not been filed as neither the said proceedings nor copy of order dated 2.5.2003 were put up before undersigned for drafting an appeal. I immediately directed to the concerned Managing Clerk on 19.8.2010 to file an application for certified copy of judgment and order dated 2.5.2003. Accordingly, an application for certified copy was made on 23.8.2010 and same was made available on 6.9.2010 and certified copy of order dated 2.5.2010 was also delivered on 6.9.2010 and accordingly, appeal has been filed on 16.9.2010."

8. The appellants contested the prayer made by the Corporation for condonation of delay by asserting that the story of misplacement of the papers is unbelievable and is liable to be discarded because the applications for condonation of delay do not mention as to when the misplaced papers were traced out by the concerned department. They also pleaded that the transfer of Shri Ranindra Y. Sirsikar from one section to the other has no bearing on the issue of condonation of delay because the Corporation has employed several advocates and no explanation whatsoever has been offered for not filing the applications for certified copies of the judgment of the trial Court till 23.8.2010.

9. The learned Single Judge of the High Court referred to the judgments of this Court in Collector, Land Acquisition, Anantnag v. Mst.Katiji (1987) 2 SCC 107 and State of Nagaland v. Lipok AO (2005) 3 SCC 752 : [2005 ALL MR (Cri) 1570 (S.C.)] and condoned the delay by recording the following observations:

"Having regard to over all facts and circumstances of the case, the cause shown by the Corporation for condonation of delay, in my opinion, is sufficient and the delay deserves to be condoned. I is well settled that the expression "sufficient cause" is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. The court are expected to take liberal approach in such matters where refusal to condone delay is likely to result in a meritorious matter being thrown out at the very threshold.

Taking the law laid down by the Supreme Court in view and considering over all facts and circumstances of the case, so also the fact that if the delay is not condoned the meritorious appeal is likely to be thrown at the very threshold, I am inclined to condone the delay in filing these appeals. Hence, the Civil Application Nos. 3625 of 2010 and 3691 of 2010 are allowed in terms of prayer clause (a)."

10. Shri A.S. Bhasme, learned counsel for the appellants argued that the reasons assigned by the learned Single Judge for condoning more than 7 years and 3 months delay in filing the appeals are legally unsustainable and the impugned order is liable to be set aside because the explanation given by the Corporation lacked bonafides and was wholly unsatisfactory. Learned counsel emphasized that in the absence of any denial by the Corporation that it has a battery of advocates to deal with the litigation, the transfer of Shri Ranindra Y. Sirsikar in January, 2004 to Miscellaneous Court and, thereafter, to other Courts has no bearing on the issue of delay because the suits filed by the appellants had been decided in May, 2003 and no explanation has been given as to why applications for certified copies could not be filed for 7 years and 5 months. Shri Bhasme submitted that even if one advocate / law officer was transferred from one department / division to another, nothing prevented the Corporation from taking steps to apply for certified copies of the judgment. Shri Bhasme further submitted that the story of misplacement of papers was concocted by the Corporation and the same ought to have been rejected by the High Court because the assertion made in that regard was vague to the core and no indication was given as to when the papers were traced and by whom. In support of his argument, Shri Bhasme relied upon the judgments of this Court in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation (2010) 5 SCC 459 : [2010 ALL SCR 816].

11. Shri Pallav Shishodia, learned senior counsel appearing for the Corporation argued that the discretion exercised by the learned Single Judge of the High Court to condone the delay does not suffer from any legal

infirmity and the mere possibility that this Court may, on a fresh analysis of the pleadings of the parties, form a different opinion does not furnish a valid ground for exercise of power under Article 136 of the Constitution. Shri Shishodia submitted that in last more than two decades the Courts have time and again emphasized that while considering the question of condonation of delay, the pleadings of the parties should be construed liberally and the genuine cause of a party should not be defeated by refusing to condone the delay. In support of his argument, Shri Shishodia relied upon the often cited judgments in Collector, Land Acquisition, Anantnag v. Mst. Katiji (supra) and State of Nagaland v. Lipok AO [2005 ALL MR (Cri) 1570 (S.C.)] (supra). Shri Shishodia also pointed out that the appellants had raised illegal construction and if the challenge to the decrees passed by the trial Court was aborted by the High Court by refusing to condone the delay, serious injury would have been caused to the public interest.

12. We have considered the respective arguments / submissions and carefully scrutinized the record. 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. The expression ‘sufficient cause' used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serve the ends of justice. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.

13. In Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, this Court while interpreting Section 5 of the Limitation Act, laid down the following proposition:

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is 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. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.”

14. In Collector, Land Acquisition, Anantnag v. Mst. Katiji (supra), this Court made a significant departure from the earlier judgments and observed:

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the lifepurpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and

cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do evenhanded justice on merits in preference to the approach which scuttles a decision on merits."

15.In N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, the Court went a step further and made the following observations:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the

courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

16. In P.K. Ramachandran v. State of Kerala, (1997) 7 SCC 556 : [2001(4) ALL MR 254 (S.C.)], this Court while reversing the order passed by the High Court which had condoned 565 days delay in filing an appeal by the State against the decree of the Sub-Court in an arbitration application, observed 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 and the Courts have no power to extend the period of limitation on equitable grounds. In Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106, the Court observed that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises.

17.In State of Nagaland v. Lipok AO [2005 ALL MR (Cri) 1570 (S.C.)] (supra), the Court referred to several precedents on the subject and observed that the proof of sufficient cause is a condition precedent for exercise of discretion vested in the Court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Court also took cognizance of the usual bureaucratic delays which takes place in the functioning of the State and its agencies/instrumentalities and observed:

"Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, filepushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal."

18. 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. 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. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

19. In the light of the above, it is to be seen whether the explanation given by the respondent for condonation of more than 7 years and 3 months delay was satisfactory and whether the learned Single Judge of the High Court had correctly applied the principles laid down by this Court for the exercise of power under Section 5 of the Limitation Act.

20. Though it may appear repetitive, we consider it necessary to notice the following salient features of the applications filed by the respondent and the affidavit of Shri Ranindra Y. Sirsikar:

1. As per the office procedure, Shri Ranindra Y. Sirsikar had given intimation to the concerned department about the trial Court's judgment dated 2.5.2003. This statement is supported by copy of the despatch extract dated 12.5.2003 (Ext. B) filed with his affidavit.

2. According to the Corporation, the papers required for filing the first appeals were misplaced and not traceable in spite of good efforts. In this context, Shri Sirsikar has made the following statement:

"I say that thereafter, from the record it seems that the concerned department misplaced the papers and were not traceable. So nobody followed up on the matter"

3. As per the averments contained in the application, Shri Sirsikar was transferred from Civil Section to Criminal Section in June, 2004 and, therefore, lost tract of the matter and the first appeals remained to be filed due to oversight and heavy work load. As against this, Shri Sirsikar states that he was transferred to Miscellaneous Court on 2.1.2004 and from Miscellaneous Court to Criminal Court on 5.6.2004, where he worked up to 28.9.2005. Thereafter, he was transferred to High Court on original side and was working there on the date of filing the affidavit.

4. As per the averments contained in the application, the advocate came to know that appellant fraudulently obtained alternative accommodation under the judgment of the trial Court even though she was given permission for constructing mezzanine floor to the extent of structure affected by road widening. In this context, Shri Sirsikar has disclosed that the issue relating to the claim made by the appellant for alternative accommodation was considered in the meeting held on 2.8.2010 in the chamber of Additional Municipal Commissioner and, on the basis of discussion held in that meeting, direction was given by him to the Managing Clerk on 19.8.2010 to file application for certified copy of the judgment. According to Shri Sirsikar, the application was made on 23.8.2010 and the certified copy was made available on 6.9.2010.

21. The applications filed for condonation of delay and the affidavits of Shri Sirsikar are conspicuously silent on the following important points:

(a) The name of the person who was having custody of the record has not been disclosed.

(b) The date, month and year when the papers required for filing the first appeals are said to have been misplaced have not been disclosed.

(c) The date on which the papers were traced out or recovered and name of the person who found the same have not been disclosed.

(d) No explanation whatsoever has been given as to why the applications for certified copies of the judgments of the trial Court were not filed till 23.8.2010 despite the fact that Shri Sirsikar had given intimation on 12.5.2003 about the judgments of the trial Court.

(e) Even though the Corporation has engaged battery of lawyers to conduct cases on its behalf, nothing has been said as to how the transfer of Shri Ranindra Y. Sirsikar operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against.

22. Unfortunately, the learned Single Judge of the High Court altogether ignored the gapping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of judgment for more than 7 years. In our considered view, the cause shown by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the learned Single Judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act.

23. In the result, the appeals are allowed. The impugned order is set aside and the appeals filed by the respondent against the judgments of the trial Court are dismissed. The parties are left to bear their own costs.

Equivalent: (2012) 5 SCC 157,

Tags: 2012 PLRonline 0100, Maniben Devraj Shah, Maniben Devraj Shah v. Municipal Corporation Of Brihan Mumbai