

(2014) 09 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : CM No. 12348-CI of 2014 and CM Nos. 7499-CI and 7501-CI of 2014
in RFA No. 4343 of 2014 (O & M)

Greater Mohali Area Development Authority

APPELLANT

Vs

Nectar Life Sciences Limited

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, 151
Limitation Act, 1963 — Section 5

Citation : (2014) 09 P&H CK 0150

Hon'ble Judges : Inderjit Singh, J

Bench : Single Bench

Advocate : Rupinder Khosla, Senior Advocate and Aman Sharma, Advocate for the Appellant; Sudhir Mittal and Atul Gaur, Advocate for the Respondent

Judgement

Inderjit Singh, J.

CM No.12348-CI of 2014

1. The application for preponing is allowed. Though reply has been filed by the contesting-respondent but the counsel for the contesting-respondent has not objected preponing. Civil Misc. Application No.7499-CI of 2014 for condonation of delay and Civil Misc. Application No.7501-CI of 2014 for stay of operation of judgment are taken up today.

CM No.7499-CI of 2014

2. This is an application u/s 5 of the Limitation Act for condonation of delay of 191 days in filing the appeal.

3. Learned counsel for the contesting-respondent contested this application. He has cited judgment passed by the Hon'ble Delhi High Court in Delhi Development Authority Vs. Ramesh Kumar, in which it is held that for delay of 182 days in filing the appeal, the explanation is wholly unsatisfactory.

Administrative delays have to be properly explained. Learned counsel for the contesting respondent has further cited judgment passed by the Hon''ble Supreme Court in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, In that case, there was delay of 1067 days in filing the appeal. He has also cited judgment passed by the Hon''ble Supreme Court in Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another, In that case, there was delay of 1724 days in filing the appeal. Learned counsel for contesting-respondent further cited judgment passed by the Hon''ble Supreme Court in Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, In that case, there was delay of 7 years in filing the appeal. I have gone through all the above-cited judgments and the same having distinguished facts will not apply in the present case.

4. On the other hand, learned counsel for the applicant- appellant has cited judgment passed by the Hon''ble Delhi High Court in State Thru C.B.I. vs. R.P. Tiwari, 2011(6) R.C.R (Criminal) 1309, in which it is held that the expression "sufficient cause" in Section 5, must receive liberal construction so as to advance the cause of justice. Where there is no allegation of gross negligence, absence of bonafides, or intentional delay or inaction attributable to the party, the delays in filing appeals, particularly when filed by Government, should be condoned in the interest of justice, as also in the public interest. I have gone through this above-cited judgment and the same fully applies to the facts in the present case.

5. Learned counsel for the applicant-appellant has further cited judgment passed by the Hon''ble Supreme Court in State of Nagaland Vs. Lipok AO and Others, in which it is held that the Court should be liberal in condoning delay. Unless want of bonadies of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned. It is also held that "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner. It is further in this judgment that the Court should not adopt an injustice oriented approach in rejecting the application for condonation of delay. The above-cited judgment fully applies to the facts in the present case.

6. In view of the law cited by learned counsel for the applicant-appellant and in view of the fact that there is delay of only 191 days in this case and further there is no gross negligence on the part of the applicant-appellant, nor the appellant is to be benefited in any way by filing the present appeal late, the application is allowed. Delay of 191 days in filing the appeal is condoned.

CM No.7501-CI of 2014

7. This is application under Order 41 Rule 5 read with Section 151 CPC for stay of the operation of the judgment dated 12.08.2013 passed by learned Addl. District Judge, Mohali.

8. Learned counsel for the applicant-appellant argued that learned Addl. District Judge, Mohali has passed the award dated 12.08.2013 and enhanced the

compensation for the acquired land to `2,61,87,000/- per acre. Besides this, the reference Court also awarded statutory benefits as per the Land Acquisition Act. He also argued that earlier in pursuance of the notification, Award No.508 was passed on 16.04.2010 and the compensation was awarded for the acquired land @ `1.5 crore per acre including the statutory benefits. Learned counsel for the applicant-appellant further argued that on the basis of other award, this enhancement has been made, which has not become final and that award is still pending for adjudication.

9. On the other hand, learned counsel for the contesting- respondent contested this application and argued that learned Addl. District Judge, Mohali has correctly passed the award. Rather, some of the sale deeds show the value of the land much more than the amount of award.

10. After hearing learned counsel for the parties and after going through the record, I find that if the amount attached is paid to the respondent-owner, then this appeal will become infructuous. There are arguments that compensation has been enhanced on the basis of some other award, which has not become final and still pending for decision before the higher Court. I further find that prima facie case is in favour of the applicant-appellant to at least stay disbursement of 50% amount. The remaining 50% amount which is to be disbursed to the contesting-respondent, be released to respondent-owner after taking adequate security, to the satisfaction of executing Court. The remaining 50% amount, which is lying attached with the executing Court, will not be released from the attachment till the decision of the case and may be deposited in the shape of FDR, and the amount will be released as per the decision of the present case.

RFA No.4343 of 2014 (O and M)

11. To come up on the date already fixed i.e. on 09.09.2014.