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**(1968) 06 CAL CK 0004**  
**In the Calcutta High Court**  
**Case No : Civil Revision No. 768 of 1968**

Indra Mohan Kapur

APPELLANT

Vs

Commissioner, Corporation of Calcutta

RESPONDENT

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**Date of Decision :** 13-06-1968

**Acts Referred:**

Calcutta Municipal Act, 1951 — Section 391, 414, 414(3)  
Limitation Act, 1963 — Section 5

**Citation :** (1969) 1 ILR (Cal) 225

**Hon'ble Judges :** P.N. Mookerjee, J;A.N. Chakrabarti, J

**Bench :** Division Bench

**Advocate :** Kalipada Sinha and Gurudas Ghose, for the Appellant;Ajoy Kumar Basu, for the Respondent

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## Judgement

A.N. Chakrabarti, J.—This Rule is directed against an order of the Building Tribunal of the Corporation of Calcutta constituted u/s 391(b) of the Calcutta Municipal Act, 1951.

2. The Petitioner made some constructions on his leasehold land at No. 38 Dr. Suresh Sarkar Road. The Corporation of Calcutta started a demolition case against him u/s 414 of the Calcutta Municipal Act on the ground that the constructions were unauthorised. The Commissioner of the Calcutta Corporation, who heard the case, passed an order u/s 414(3) of the said Act on May 20, 1967, for the demolition of the unauthorised structures. The Petitioner filed an application for the reconsideration of his order on September 8, 1967. This prayer for reconsideration was made in the form of a memorandum of appeal. The Commissioner, however, treated this memorandum as an application for review and he rejected it on November 28, 1967, and communicated the order to the Petitioner on December 20, 1967. Thereafter, an appeal was preferred to the Building Tribunal on January 19, 1968.

3. Under the Municipal Act an appeal against an order of the Commissioner to the Building Tribunal has to be filed within a period of thirty days. Prima facie,

the appeal that was filed on January 19, 1968, was barred by limitation so far as the order dated May 20, 1967, was concerned.

4. Before the Tribunal it was argued on behalf of the present Petitioner that the earlier order of May 20 had merged into the order refusing to review it and that hence limitation was to be computed from the date of intimation of the order of rejection which was December 20, 1967. If that were so the appeal would be within time. The Tribunal, however, rejected this contention of the Appellant. The Appellant, that is to say, the Petitioner before us, after the arguments before the Appellate Tribunal on the point of limitation had been heard, filed an application u/s 5 of the Limitation Act for condonation of the delay. The Tribunal was not, however, satisfied that there was sufficient cause for delay and, in this view of the matter, dismissed the appeal preferred before it, and the present revisional application is directed against this order of dismissal by the Building Tribunal.

5. We agree with the view of the Tribunal that the order that was passed by the Commissioner on November 28, 1967, rejecting the prayer for review, was not appealable. The appeal would, no doubt, be within time if limitation is calculated from December 20, 1967, on which date the result of the review application was intimated. But as this order is not appealable, the fact that the appeal was filed within thirty days from the date of its communication, was of no help to the Petitioner. The real question is whether there was any sufficient ground for condoning the delay that was made in filing the appeal so far as the order that was passed on May 20, 1967, is concerned. The appeal was filed about eight months after this date, that is to say, the date on which the order of demolition was made. Out of these eight months, the period from September 8, 1967 to December 20, 1967, was covered by the review proceeding that was pending before the Commissioner.

6. Applying the principles laid down in the case of 22 CWN 169 (Privy Council) the period covered by the review case should be excluded in computing the limitation provided, of course, the review application was made within the period of limitation fixed for filing the appeal. In the present case, the review application was filed on September 8, 1967, that is to say, after the expiry of the period for filing the appeal before the Tribunal.

7. A question, therefore, arises as to whether there was any sufficient cause for this delay in filing the review application. The Petitioner's inaction between May 20, 1967 and September 8, 1967, has to be explained. The Petitioner had in his application u/s 5 of the Limitation Act stated that at about the time when the demolition order was made he had a heart attack and that he remained sick and bed ridden for a considerable period thereafter. The Tribunal had not considered how far this alleged illness of the Petitioner could be considered as a sufficient cause for the delay. If the alleged illness of the Petitioner be found true, then that might be a good ground for condoning the delay that was made in the filing of the application for review. And if the delay that was made in the (sic) of the application for review could be condoned, then the appeal would be within time.

But, the question whether the facts alleged in the petition u/s 5 of the Limitation Act regarding the illness of the Petitioner are true or not should be examined by the Tribunal itself and for this purpose the matter should be sent back to the Tribunal.

8. In this connection Mr. Basu, appearing for the opposite parties, drew our attention to the position that, under the Municipal Act, there was no provision for filing any review petition against the order of the Commissioner and he contended that, as there was no provision for filing a review petition against the order of the Commissioner, the principles laid down in Brij Inder Singh's case Supra had no application in this case. But, we find that, whether there be any provision for filing any review petition or not, the Commissioner had entertained the petition that was filed for reconsideration of his order and treated it as an application for review. That being the position, it did not matter in the least whether there was in law any provision for allowing the aggrieved party to file an application for review, whether or not the law allowed the aggrieved party to file an application for review against an order of the Commissioner. So, that disposes of the contention of Mr. Basu.

9. In the result, therefore, we set aside the order of the Building Tribunal dismissing the appeal of the Petitioner and send back the matter to the Tribunal for the consideration of the question whether there was any sufficient ground for condoning the delay that was made in filing the review petition. And if the Tribunal be satisfied that there was sufficient ground for excluding the period from May 20, 1967 to September 8, 1967, then the appeal will be registered, if it is found to be otherwise in form and the Tribunal would hear out the appeal according to law.

10. The Rule is disposed of accordingly.

11. I make no order as to costs.

P.N. Mookerjee, J.

12. I agree in the order, proposed by my learned brother, that the matter should go back for reconsideration to the Building Tribunal upon the question whether the period between May 20, 1967 and September 8, 1967, should be excluded in computing the period of limitation for the appeal in question. I would only like to add a few observations as follows:

13. That, on the authority of Brij Inder Singh's case Supra, the Petitioner, in the circumstances before us, would be entitled to exclusion of the entire period from September 8, 1967 to December 20, 1967, during which the Petitioner's application for reconsideration must be deemed to have been pending under the law provided, of course, his application for reconsideration or review was filed within time fixed or limited for the filing of an appeal. That will require consideration of the question whether the Petitioner, in the facts of this case, would have been entitled to file his appeal on September 8, 1967 or, in other

words, whether he had sufficient cause for not taking necessary steps in the matter prior to September 8, 1967. For that purpose, the story of illness, as set out by the Petitioner, has to be examined and investigated, and the same should be considered by the Tribunal below as directed by my learned brother. So far as the period between December 20, 1967 and January 19, 1968, is concerned, that will not be of much consequence as, on the facts before us, there appear to be no laches and no unreasonable delay on the part of the Petitioner during this period. If then the Petitioner is entitled, as stated above, to the exclusion of the entire period between May 20, 1967, to December 29, 1967, on the observations made above and upon a finding in his favour by the Tribunal below on the question of sufficient cause u/s 5 of the Limitation Act for the period May 20, 1967 to September 8, 1967, he will be entitled to have his appeal registered, if it is otherwise in form.

14. In the circumstances, I agree in the order proposed by my learned brother.