
(2004) 08 DEL CK 0001
In the Delhi High Court
Case No : LPA No. 837 of 2003

MCD

APPELLANT

Vs

Hamdard (Wakf) Laboratories India

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 164(2)
Limitation Act, 1963 — Section 5

Citation : (2004) 114 DLT 142

Hon'ble Judges : S. Ravindra Bhat, J;D.K. Jain, J

Bench : Division Bench

Advocate : Amita Gupta, for the Appellant; H.L. Narula, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—This is an application u/s 5 of the Limitation Act, 1963, whereby the Municipal Corporation of Delhi (for short "the MCD") prays for condensation of delay of 213 days in filing the appeal against the order passed by a learned Single Judge of this Court on 30th January, 2003. By the impugned order, the learned Judge has directed the MCD to grant vacancy remission to the respondent herein in respect of a plot of land, bearing municipal No. 317-18, Block B, Okhla Industrial Area, Phase-I, New Delhi, for the period it had remained vacant and unproductive of rent for sixty or more consecutive days, as stipulated in Section 164(2) of the Delhi Municipal Corporation Act, 1957. The plea of the MCD that an initial letting of the property is a pre-requisite for claim of vacancy remission has not found favor with the learned Judge. We may note at this juncture itself that for coming to the aforementioned conclusion, the learned Judge has relied on an earlier decision of this Court in Municipal Corporation of Delhi Vs. Lawrence Cold Storage Pvt. Ltd. and Another and Indraprastha Ice and Cold Storage and Another, , which in turn was based on MCD's own instructions (No. 9) dated 9th July, 1980. In the said instructions it was clarified that claim for vacancy remission in respect of a building which had

remained vacant even in the first instance, after completion, should be allowed u/s 164 of the said Act. It is not the appellant's case that the decision in Lawrence Cold Storage (supra) is under challenge.

2. For the sake of ready reference, the reasons for delay in filing the appeal, as narrated in the application, are reproduced hereunder:

"2. That the certified copy of the impugned order dated 30.1.2003 was applied on 31.1.2003 and the same was prepared on 13.2.2003.

3. That the Counsel for the MCD had informed the Department to file Letters Patent Appeal and sent the certified copy of the order dated 30.1.2003 in June, 2003 as all the files of the disposed of cases are returned to the Department during vacations.

4. That the Counsel had appeared in CWP No. 1905 of 1991 after taking the file from the Hon'ble Court and, thus, she had no papers for filing the Letters Patent Appeal. The Counsel wrote to the Department to trace the files and send the same along with copy of the writ petition, Annexures, counter affidavit, etc.

5. That the Department collected the necessary files on 28.8.2003 and the same were delivered to the Counsel on 5th September, 2003, The Letters Patent Appeal was prepared on 9.9.2003 and the same was filed on 15.9.2003 after getting the affidavit signed by the competent officer.

6. That there is delay of 213 days in filing the Letters Patent Appeal due to the aforementioned circumstances."

It is pleaded that the delay in filing the appeal is neither willful nor intentional.

3. Having heard Ms. Amita Gupta, learned Counsel for the MCD, we are of the view that the applicant has failed to make out a case for condensation of delay in filing the appeal.

4. The matter in regard to the condensation of delay in filing appeals by the State, public corporations and public undertakings, etc. has engaged the attention of the Courts, including the Apex Court, umpteen times but we do not propose to burden this order by making reference to all these decisions. Nonetheless, reference to a few decisions of the Supreme Court, wherein broad guidelines, which are to be kept in view while dealing with such applications, have been drawn would be necessary.

5. In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , apart from holding that departmental delays and bureaucratic procedures could be taken into account, their Lordships of the Supreme Court observed that the Court should keep "public interest" also in mind. Answering the question whether or not to apply the same standard while applying the sufficient cause test to all the litigants regardless of their personality in the said context, their Lordships further observed that the words "sufficient cause" in Section 5 of the Limitation Act are adequately elastic to enable the Court to apply the law in a

meaningful manner which subserves the ends of justice, that being the life-purpose for the existence of the institution of Courts. The Court pithily observed that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred inasmuch as the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay.

6. In *Union of India v. N. Das R. Israni* 1993 AIR SCW 2573, while observing that law makes no distinction between a private party and Government, the Supreme Court said that the approach of the Court must be to advance substantial justice but should not be a pedantic or a legalistic approach.

7. Again in *State of Haryana Vs. Chandra Mani and others*, , inter alia, observing that litigants including the State are accorded the same treatment in an even-handed manner, and no separate standards to determine the cause laid down by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause, the Apex Court observed that in view of the procedural red-tapism in the process of making decisions and in order to see that ultimately the public interest does not suffer, certain amount of latitude to the appeal brought by the State is not impermissible. It was held that the expression "sufficient cause" should be considered with pragmatism in justice-oriented approach rather than the technical detection of "Sufficient cause" for explaining every day's delay. Nevertheless, in none of its decisions the Supreme Court has held that since a liberal approach is normally adopted while dealing with such applications filed by a public authority, the delay in filing appeal by them is to be condoned on a mere asking. Irrespective of the fact whether a litigant is the State or a private party, "sufficient cause" has to be shown for the delay in filing the appeal. The only difference would be some amount of latitude to the State on account of procedural red-tapism and the larger public interest.

8. Tested on the touchstone of the afore-noted broad principles to be kept in view while dealing with such applications, we are of the view that the applicant has miserably failed to show any cause, much less a sufficient cause for delay in filing the appeal. The afore-extracted paragraph hardly discloses any reason for the delay. It is not explained as to why for over four months, the Counsel did not send the certified copy of the judgment to the department, while recommending filing of LPA. Then again the department took more than two months in collecting the relevant files. It is not indicated where the file was misplaced; how and by whom was it traced out. Evidently, it is not a case where delay in filing appeal was on account of procedural complexities. This is not even pleaded. It is a plain and simple case of inaction and negligence, for which no indulgence can be given to the appellant. In our opinion the afore-extracted paragraphs hardly spell out any reason/cause for condensation of delay.

9. In this view of the matter, and having regard to the nature of the controversy involved in the appeal, namely, the grant of vacancy remission, which issue, as noted supra, is no more rest integra insofar as this Court is concerned, we are of

the view that it is not a fit case for condensation of delay in filing the appeal. The application is dismissed accordingly.

LPA No. 837/2003 & CM No. 2038/2003:

In view of the fact that the application seeking condensation of delay in filing the appeal has been dismissed, the appeal is also dismissed as barred by limitation. Application seeking stay of the impugned order is also rendered infructuous and is dismissed accordingly.