
(1993) 09 DEL CK 0040

In the Delhi High Court

Case No : Regular Second Appeal No. 19 of 1993

Municipal Corporation Delhi

APPELLANT

Vs

Savitri Devi

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Limitation Act, 1908 — Section 5

Citation : (1994) 53 DLT 109 : (1993) RLR 620

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : J.M. Sabarwal and J.R.Tandon, for the Appellant;

Judgement

V.B. Bansal, J.

(1) Municipal Corporation of Delhi (for short the appellant) has filed this Regular Second Appeal against the order dated 20.10.1992 of ShriS.N. Dhingra, Additional District Judge, Delhi, thereby dismissing the application moved by the appellant u/s 5 of the Limitation Act and, consequently, the appeal against the judgment and decree dated 22.10.1990 of Shri C.K. Chaturvedi, Sub-Judge, 1st Class, Delhi, was also dismissed.

(2) The learned Sub-Judge had passed a decree in favor of Smt. Savatri Rana and against the Municipal Corporation of Delhi for a declaration that her termination from service under Rule 5(1) of the Central Civil Services (Temporary Rules), 1965 was bad in law and the order dated 28.7.1977 terminating her services was set aside. It was also declared that the plaintiff continued to be in service and would, thus be entitled to the consequential benefits.

(3) The case of the appellant has been that an application was moved for obtaining certified copy of the judgment on 14.11.1990, which was ready on 19.11.1990. In this way, the appeal could be filed up to 27.11.1990 but was actually filed on 20.12.1990. An application for condensation of delay in filing the appeal was also moved Along with the appeal.

(4) It was inter alia pleaded in the application u/s 5 of the Limitation Act that after the certified copy was made available on 19.11.1990 the case was sent by the Counsel for the Municipal Corporation of Delhi to the Department for further necessary action in the matter. But the file could not be moved from one office to the other as the same got mixed up with other files. It was also claimed that as soon as the file was traced out the matter was forthwith taken up and the appeal has been filed without any delay thereafter. It was also pleaded that the appellant being a Corporate body was run by a number of persons and requires the advice of persons and on this account the appeal could not be filed within the period of limitation. Further averment made in the application was that there was no intentional delay in filing the appeal. This application was supported by an affidavit of Shri Bhopal Singh, Legal Assistant (Vigilance Department), Municipal Corporation of Delhi.

(5) The application was opposed by the respondent and by the impugned order the application and, consequently, the appeal was dismissed as referred to above.

(6) I have heard Shri J.M. Sahbarwal, learned Counsel for the appellant and Shri J.R. Tandon, learned Counsel for the respondent. I have also gone through the file.

(7) Learned Counsel for the appellant has submitted that there could possibly be no intentional delay on the part of the appellant in filing the appeal before the learned Additional District Judge, Delhi and that the appellant being a Corporate body, the matter had to pass through many hands that the file got mixed up on account of which earlier action could not be taken. He has further submitted that enquiry has been instituted to fix responsibility for this lapse and that as soon as the file could be searched, immediate steps were taken for filing the appeal. He has, thus, submitted that the learned Appellate Court has erred in dismissing the application of the appellant for condensation of delay in filing the appeal and, consequently, dismissing the appeal itself. He has further submitted that the appellant has a good case on merits. Reliance has been placed by the learned Counsel for the appellant on the case Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, .

(8) Learned counsel for the respondent has, on the other hand, submitted that the appellant cannot claim any special privilege with regard to the relief of getting the delay condoned in filing the appeal and that the grounds for condensation of delay are same for all. He has further submitted that in the application for condensation of delay, moved before the Additional District Judge, no details have been given and no sufficient cause was shown so as to enable the Appellate Court to exercise discretion in favor of the appellant in condoning the delay. He has submitted that the application moved by the appellant was, in fact, so vague that nothing could be found out to be a ground for condensation of delay. He has also submitted that even the affidavit in support of this application was not filed of any responsible person and the appellant was satisfied with filing

an affidavit of only a Legal Assistant of the Vigilance Department. He has, thus, submitted that there has not been any irregularity or illegality in the order of the learned Appellate Court exercising judicial discretion in dismissing the application for condensation of delay. He has also submitted that there is no case made out for condensation of delay and prayed that "the appeal may be dismissed. He has placed reliance upon the judgment in M/s. M.L. Mahajan v.D.D.A. b Another 1992 RaJ LR 242 : Municipal Corporation of Delhi v.Parmod Nath (1991 Rajdhani Law Reporter (Note) 31); and Krishna Construction Co. v. D.D.A. 1991 Raj LR 127.

(9) In case Collector, Land Acquisition, Anantnag & Another v. Mst. Katiji and Others (Supra) it has been observed by the Hon"ble Supreme Court of India that the expression sufficient cause employed by the Legislature is sufficiently elastic to enable the Courts 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. It has also been observed that ordinarily a litigant does not stand to benefit by lodging an appeal late and that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated, while the condensation of delay at the highest would amount to deciding a matter on merits after giving hearing to the parties. It was also observed that there was no presumption that delay is occasioned deliberately or on account of culpable negligence and that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

(10) In case G. Ramegowda, Major etc. v. The Special Land Acquisition Officer, Bangalore (Supra) it has been held that the law of limitation is the same for private citizen as for government authorities and the government like any other litigant must take responsibility for the acts of omission of its officers. It was also observed that the government decisions are proverbially encumbered and there may be considerable degree of procedural red tape in the process of their making and that this aspect may be taken note of by the Courts while dealing with an application for condensation of delay. It has also been observed that if there is no negligence on deliberate inaction or lack of bonafides the delay could be condoned.

(11) A perusal of the judgment in G. Ramegowds, Major etc. v.The Special Land Acquisition Officer, Bangalore (Supra) clearly indicates that averments were made by the Land Acquisition Officer that due to the unusual conduct of the District Government Pleaders who were in office during a particular period, government had to face the problem of delay in filing of appeals in hundreds of cases and for some time there was utter confusion on account of which it became practically impossible to know as to which were the land acquisition matters which had been disposed of and in which appeals were not filed though appeals ought to have been filed. It was also found that on account of this fraud played in the filing of appeals the government may lose more than a crore of rupees. This was one of the considerations for condoning the delay. However, in the instant

case the details are absent from the application. The learned Counsel for the appellant had submitted that the Appellate Court ought to have at least given opportunity to the appellant to produce evidence. I am afraid this argument cannot be accepted. The evidence could be produced only on the facts pleaded and it could not go beyond the pleadings. In the absence of any detail in the application I am clearly of the view that no such permission was required. This Court has taken similar view in the case of *Municipal Corporation of Delhi v. Parmod Nath* (Supra) 31); and *Krishna Construction Co. v. D.D.A.* (Supra).

(12) The short question for consideration is as to whether the appellant had shown sufficient cause in the application for condensation of delay. The contents of the application have already been referred to in the earlier part of this order. It can safely be said that, in fact, no details at all have been mentioned in this application as to why no steps were taken in time for filing the appeal. It is impertinent to note that in the application there is no mention as to when the case file was sent by the counsel for the Municipal Corporation of Delhi and who had received the same. There is no mention as to at what stage the file got mixed up and on which date and by whom it was traced. The application is also silent as to how this file was dealt with after being traced, till the appeal was filed. No further details are available in the affidavit supporting the application. Can in these circumstances it be said that the learned Appellate Court has committed a mistake in not condoning the delay in filing the appeal. After giving my thoughtful consideration to all these facts, I have no hesitation in coming to the conclusion that the only alternative available with the learned Appellate Court was to dismiss the application. Similar was the view of Jaspal Singh, J. in the case of *M/s. M.L. Mahajan v. D.D.A. & Another* (Supra). Reliance was also placed in the said judgment on the observations of the Hon'ble Supreme Court of India in case *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, which read as under :

"27. Mr. D. Mukherji, learned Counsel for the first respondent has certainly well founded in its contention that the expression "sufficient cause" cannot be construed too liberally, merely because the party in default is the Government. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction. But it cannot also be gainsaid that the same consideration that will be shown by Courts to a private party when he claims the protection of Sec.5 of the Limitation Act should also be available to the State."

In view of the foregoing discussion, I am clearly of the view that no case has been made out by the appellant for condensation of delay in filing the appeal. The learned Appellate Court has rightly dismissed the appeal being barred by time. The Regular Second Appeal stands dismissed. Parties are left to bear their own costs.