

**IN THE COURT OF SH. SANJAY GARG-I
PRINCIPAL DISTRICT & SESSIONS JUDGE,
CENTRAL DISTRICT,
TIS HAZARI COURTS, DELHI**

MCD Appeal no. 12/2023 & 13/2023

Municipal Corporation of Delhi

....Appellant

Versus

Smt. Raj Rani & Ors.

..... Respondents

**ORDER ON APPLICATION UNDER SECTION 5 OF THE
LIMITATION ACT:**

1. Vide this order I shall decide an application under Section 5 of the Limitation Act filed on behalf of appellant seeking condonation of delay in filing the present appeal.
2. The appellant has filed appeal under Section 347-D of the DMC Act against the impugned order dated 07.03.2023 passed by the learned ATMCD whereby appellant was directed to de-seal the property of appellant. Alongwith the present appeal, an application has been filed under Section 5 of the Limitation Act seeking condonation of delay in filing the present appeal.
3. I have heard learned counsel for both parties and also perused the material available on record.

4. Learned counsel for appellant submits that there is a delay of 35 days in filing the appeal. He submits that the appeal was filed on 18.05.2023 at the filing section and the same got listed before this court on 25.05.2023. He submits that the delay was un-intentional and bonafide as the appellant is a statutory body. He further states that there are different wings/departments of the appellant and procedure to get the approval and permission from the concerned authorities for instituting the appeal takes time. It is stated that necessary record and documents were not available and traceable and considerable time was spent on tracing the documents.

5. Learned counsel for respondent submits that as per portal of Delhi District Courts, the appeal was filed on 22.05.2023 and the total duration of delay comes out to be 43 days. He submits that merely because the appellant is a government body, this is no ground to condone the delay. Learned counsel further submits that it is settled law that they are supposed to explain the delay of each and every day with documents.

6. Learned counsel appellant admits that as per portal of Delhi District Courts, the appeal was filed on 22.05.2023 and the total days of delay comes to 43 days. In support of his contention regarding procedural delay in obtaining permission of the concerned authorities for filing the appeal, learned counsel for appellant has filed, record of notings of officials of MCD in subject case.

7. On checking the case details on CIS portal, it is found mentioned that the appeal was filed on 22.05.2023.

8. Hon'ble Supreme Court of India in *State (NCDT of Delhi) Vs. Ahmed Jaan 2008 (3) JCC 2128* has held that what counts is not the length of the delay but the sufficiency of cause and shortness of delay is one of the circumstances to be taken into account in using discretion. Relevant observation made by the appellate court in para 14 are reproduced as follows:-

14. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing

as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

9. Similarly, Hon'ble Apex Court in ***Ram Nath Sao Vs. Gobardhan Sao AIR 2002 SC 1291 and State (NCDT of Delhi)*** has held that the expression 'sufficient cause' within the meaning of Section 5 of Limitation Act, should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to party. Relevant observations made by the learned Apex Court in paras 11, 12, and 13 is reproduced herein below:

11. 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.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court

has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari* (1969) 1 SCR 1006 and *State of W.B. v. Administrator, Howrah Municipality* (1972) 1 SCC 366.

13. 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. "

10. Hon'ble Supreme Court in *State of Assam & Ors. Vs. Susrita Holdings Pvt. Ltd. V (2017) SLT 787* has further held that the malfunctioning of the State Government regarding the unpardonable lackadaisical attitude towards pursuing matter in the Court of Law cannot be the reason for loss of public property, which involves public money and causes loss to the public exchequer.

11. Coming back to the facts of this case there is delay of 43 days in filing the appeal. Same has been explained by the appellant on the ground of time consumed in decision making and then further delay on account of record having been misplaced in the office. Though not completely satisfied with the reasons given by the appellant, keeping in view the facts, circumstances and legal position discussed in the above paras, the delay is condoned subject to cost of

Rs. 5000/- payable to the respondent. Application stands disposed of accordingly.

Announced in the open Court
on 16th April, 2024

(Sanjay Garg-I)
Principal District & Sessions Judge
Central District,
Tis Hazari Courts, Delhi