

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM No. 741/2020
CM No. 742/2020
CM No. 995/2020
CM No. 7254/2021 in
APAA No. 05/2014

Pronounced on: 24.03.2022

State Petitioner/Appellant(s)

Through:- Mr. Amit Gupta, AAG

V/s

M/s Bhatia Builders and anotherRespondent(s)

Through:- Mr. R. K. Bhatia, Advocate

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

CM No. 741/2020

01. The State of Jammu and Kashmir through Relief & Rehabilitation Commissioner filed an appeal under Section 34 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997, challenging the award dated 06.10.2014 passed by respondent No. 2 under the Jammu and Kashmir Arbitration and Conciliation Act, 1997. As there was no representation on behalf of the applicant on 26.11.2018, the appeal, that is, APAA No. 05/2014 was dismissed for non-prosecution.

02. The applicant has filed the present application seeking condonation of 398 days' in filing the application for restoration of the appeal.

03. The applicant submits that said delay in filing the restoration application has only occurred for the reason that the counsel engaged by the applicant did not inform the applicant about the dismissal of the appeal. It

was only when the applicant received the notice from the Court of Principal District Judge, Jammu for appearance in the execution application filed by respondent No. 1 and inquired about the status of the aforesaid appeal, the applicant was informed that the appeal stands dismissed. The applicant immediately thereafter sought all the requisite information and filed an application, seeking restoration of the appeal and also along with an application seeking condonation of delay in filing the same.

04. The applicant submits that the delay in filing the restoration application is neither intentional nor deliberate but has occurred only due to the reasons beyond its control. It is urged that the applicant had taken all efforts to pursue the matter by engaging counsel and filing the appeal and was under bona fide belief that the counsel will pursue the appeal. The appeal was, however, dismissed due to non-appearance of the counsel who did not inform the applicant of the same. It is also submitted that, in case, the delay is not condoned, the same will affect the public interest as it involves public money which is required to be safeguarded in the interest of justice. The appeal filed by the applicant be heard on merits to meet the ends of justice.

05. Mr. R. K. Bhatia, learned counsel for the non-applicants have opposed the application seeking condonation of delay in filing the restoration application, as according to him, the appeal was dismissed due to non-appearance of the applicant, who was not vigilant enough to file the same in time.

06. Mr. Bhatia, further submits that the applicant has not sufficiently explained the delay in filing the said application. The applicant has also not given any details regarding the communication gap with its counsel due to which the restoration application could not be filed in time. The applicant has also not been vigilant in prosecuting its case, therefore, this application is required to be rejected. The delay has occurred as the applicant was not serious in pursuing its case, there is no justifiable ground for giving preferential treatment to the applicant and thus this application and also the restoration application is required to be dismissed.

07. The respondents in support of their contention have placed reliance on the judgment of this Court in **“Executive Engineer and anr. vs. Naik Alam Paswal and anr.”** 2004 (1) JKJ 145, wherein the Court refused to condone 105 days delay on the ground that the state is duly bound to maintain record and track progress of the case. They have also placed a reliance upon the judgment of this Court in **“Satvir Gupta vs. Union of India & others”** 2004 K.L.J at Page No. 122, which holds that Rules of Limitation are prescribed to make the legal remedy available to diligent only and since the applicants did not pursue its case, therefore, it is submitted that this application be dismissed.

08. The appeal under Section 34 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 was pending in this Court since 2014, till it was dismissed due to non-prosecution in 2018. The applicant immediately after the receipt of notice in execution petition, approached the counsel for obtaining the certified copy of the order dated 17.12.2018. The

applicant submits that it could not file the application for restoration of appeal in time as it had no knowledge of dismissal of the same.

09. The applicant had engaged a counsel who had filed the appeal on its behalf. The applicant was under bona fide belief that the counsel would inform him about the stage of proceedings. Though, the applicant was not as diligent as required and did not attend each and every date of hearing on the assurance of the counsel that his presence was not required on each and every date of hearing. Therefore, the applicant cannot be penalized for the action of the counsel to bear such drastic consequences.

10. It is only because of the non-appearance of the specially appointed Advocate on 26.11.2018, the appeal was dismissed and there was a delay in filing the restoration application as the counsel has not informed the applicant regarding dismissal of the appeal. It is only when the notice on the execution petition was served upon the applicant then the applicant, they acquired knowledge of the same and filed application for restoration of the appeal.

11. In **“The Special Tehsildar, Land Acquisition, Kerala vs. K.V. Ayisumma JT 1996 (7), 204 1996 SCALE (5) 548”** decided on 23.07.1996, the Hon’ble Supreme Court held that:

“It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day today delay. The transaction of the business of the Government being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages they

take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal.”

12. Similarly, in **“State of Haryana vs. Chandra Mani & Ors. 1996 AIR 1623, 1996 SCC (3) 132”** decided on 30.01.1996, the Hon’ble Supreme Court held that:

“...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.”

13. In **“N. Balakrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123”**, decided on 03.09.1998, the Hon’ble Supreme Court held as under:

“8. Appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit

was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

“9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. x x x x x x x x x The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.”

14. As stated in “**State Of West Bengal vs. Administrator, Howrah Municipality & Ors. 1972 (1) SCC 366**” the settled preposition is as under:

“sufficient cause” in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fide is not imputable to the party seeking condonation of delay.”

15. The delay in filing the restoration application cannot be said to be intentional, deliberate or is the result of gross negligence. The applicant had in fact taken all steps for pursuing the appeal and conducting the same by engaging the counsel. The applicant has thus done everything in its powers to conduct the appeal and should not be made to suffer from inaction or deliberate omission or negligence of its counsel.

16. It is well settled that rules of limitation are not meant to destroy the rights of the parties but only to see that the parties do not resort to dilatory tactics. Therefore, sufficient cause is to be construed liberally to advance the case of substantial justice.

17. That respondent No. 1 has also been following his case diligently, it can also not be overlooked, he should also be compensated for his loss. In view of the aforesaid circumstances, I am satisfied that sufficient cause has been shown by the applicant to allow the application for condoning the delay in filing the restoration application.

18. In view of the aforesaid, this application is allowed and delay of 398 days in filing the restoration application is condoned, subject to a cost of Rs. 10,000/- to be paid by the applicant to the other side.

19. The application stands disposed of.

CM No. 742/2020

20. This application for restoration of the afore-titled appeal, i.e., APAA No. 05/2014 is taken up for consideration. The applicant has shown sufficient cause for restoring the appeal.
21. For the reasons stated in the application, the same is allowed. Restoration application (CM No. 742/2020) is allowed. The Arbitration Appeal No. 05 of 2014 is restored to its original number and place.
22. The application is **disposed of**.
23. Let the main appeal be listed on 10.05.2022.

JAMMU
24.03.2022
Michal Sharma



(Sindhu Sharma)
Judge

Whether the judgment is speaking	:	Yes/No
Whether the judgment is reportable	:	Yes/No