

Court No. - 17

Case :- RERA APPEAL No. - 28 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Gurmeet Singh

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan

With

Case :- RERA APPEAL No. - 29 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Ravi Sharma

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan

With

Case :- RERA APPEAL No. - 30 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Anju Yadav

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan

With

Case :- RERA APPEAL No. - 31 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Akhilesh Chandra Saxena

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan

With

Case :- RERA APPEAL No. - 32 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Vandana Jaiswal

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan, Deepak Dwivedi

With

Case :- RERA APPEAL No. - 33 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Raghvendra Singh

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan

With

Case :- RERA APPEAL No. - 34 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Bhanu Pratap Singh

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan, Deepak Dwivedi

With

Case :- RERA APPEAL No. - 35 of 2023

Appellant :- U.P. State Industrial Development Authority, Unnao Thru. Its Senior Project Officer/Regional Manager

Respondent :- Hari Krishan Gupta

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan, Deepak Dwivedi

With

Case :- RERA APPEAL No. - 36 of 2023

Appellant :- U.P. State Industrial Development

Authority,Unnao Thru. Its Senior Project Officer/Regional
Manager

Respondent :- Amit Singh

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan,Deepak
Dwivedi

With

Case :- RERA APPEAL No. - 37 of 2023

Appellant :- U.P. State Industrial Development
Authority,Unnao Thru. Its Senior Project Officer/Regional
Manager

Respondent :- Nisha Devi

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan,Deepak
Dwivedi

With

Case :- RERA APPEAL No. - 38 of 2023

Appellant :- U.P. State Industrial Development
Authority,Unnao Thru. Its Senior Project Officer/Regional
Manager

Respondent :- Ashok Chandra Gupta

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan

With

Case :- RERA APPEAL No. - 39 of 2023

Appellant :- U.P. State Industrial Development
Authority,Unnao Thru. Its Senior Project Officer/Regional
Manager

Respondent :- Mahesh Singh

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan,Deepak
Dwivedi

With

Case :- RERA APPEAL No. - 40 of 2023

Appellant :- U.P. State Industrial Development
Authority,Unnao Thru. Its Senior Project Officer/Regional
Manager

Respondent :- Alpana Dwivedi

Counsel for Appellant :- Kartikey Dubey

Counsel for Respondent :- Mohd.Murtaza Khan,Deepak Dwivedi

Hon'ble Alok Mathur,J.

1. Heard Sri Kartikey Dubey, learned counsel or appellant as well as Sri Deepak Dwivedi and Sri Mohd. Murtaza Khan, learned counsel for respondents.

2. With the consent of learned counsel for the parties, all the aforesaid appeals are being heard and decided by this common judgment.

3. Present appeals have been preferred against the order dated 19.07.2023 passed by the Real Estate Regulatory Authority Tribunal thereby rejecting the appeals preferred by the appellants only on the ground of delay.

4. It has been submitted by learned counsel for appellant that respondent-complainant had preferred complaints before the Real Estate Regulatory Authority which were allowed on various dates i.e. on 14.09.2022, 27.04.2022, 19.10.2022 and 24.08.2022. Against the said orders, the appellant had preferred an appeal. There were delay in filing of the appeal by a period of 103, 242, 62, 124 days respectively and along with the appeal, an application for condonation of delay was also preferred.

5. In the application of delay, it was stated that the order of Real Estate Regulatory Authority dated 27.04.2022 was communicated to the appellant on 05.05.2022. Subsequently legal opinion was taken from their counsel which was received in May, 2022 itself. It has further been stated that in the meanwhile the Office Superintendent of Trans Ganga City Office retired on 31.07.2022 and due to the said vacancy, the papers could not be processed. It has further been stated that unfortunately, the Finance and Accounts officer, posted in Trans Ganga Office had suffered from heart Attack on 03.09.2022 due to which he proceeded on leave till November, 2022 and consequently the papers could not be processed for filing appeal. It has further been submitted that it is during the aforesaid period, a similar appeal being Appeal No. 84 of 2022 (UPSIDA Vs. Ankur Gupta) was pending before the Tribunal was decided on 31.08.2022 and legal opinion was sought for preferring a second appeal before this Court and after grant of approval, the appeal was filed before the High Court which was entertained and subsequently the said counsel was

directed to file all the remaining appeals before the appellate tribunal. It was submitted that there has been some delay or the delay has been duly explained for the reasons beyond the control of the appellant and consequently the said appeal ought to have been condoned by the appellate tribunal.

6. It has been submitted that wherever contested or disputed by the respondent the facts asserted by the appellant in support of his application for condonation of delay should have been heard and consequently the appellate tribunal should have condoned the delay.

7. In the aforesaid circumstances, the appeal is accordingly admitted on following substantial question of law:-

"Whether learned Tribunal was justified in dismissing the application for condonation of delay without appreciating or dismissing the reasons stated by the appellant for condonation of delay and as to whether the exercise of power would be de hors the principle enunciated in various judgements of Hon'ble Supreme Court."

8. With the consent of learned counsels, this Court proceeds to decide the matters finally.

9. It is noticed that the appeals were filed by the appellant against the orders passed by Real Estate Regulatory Authority on various dates and the delay in filing the said appeals ranged from 62 to 242 days. The appellant had made specific assertions and had submitted following facts, namely:-

(a) That the order of Real Estate Regulatory Authority was communicated on 05.05.2022 and the legal opinion to file an appeal was also received in May, 2022.

(b) The Office Superintendent of Trans Ganga City Office retired on 31.07.2022 and thereafter no successor was appointed and due to the said vacancy there was delay in processing to file an appeal.

(c) That Finance and Accounts officer, posted in Trans Ganga Office had suffered from heart attack on 03.09.2022 due to which he proceeded on leave till November, 2022 and

(d) That a similar matter was also pending consideration before the Real Estate Regulatory Authority in Appeal No. 84 of 2022 which was dismissed on 31.08.2022 where also an opinion was sought and the said order was challenged before the High Court and the said appeal was entertained. It is only when the said

appeal was entertained the file was processed for filing of the said appeal.

10. The Tribunal while rejecting the application has noticed several judgments passed by Hon'ble the Supreme Court but has failed to consider whether the facts were sufficient or not for condoning the delay. Whenever a court or tribunal is considering the application for condonation of delay, it should take into account the various facts asserted in support of the application and findings have to be recorded whether the facts are sufficient for condoning the delay or otherwise.

11. Any order passed either allowing the application for condonation of delay or rejecting the same without recording a finding sufficiently would be arbitrary and liable to be interfered by the superior courts.

12. In the present case, the Tribunal has without discussing or considering the aforesaid facts only concluded that they do not find any facts to exercise the discretion to condone the delay and accordingly rejected 34 appeals preferred by the appellant. Such an order without necessary discussion and consideration is clearly arbitrary and liable to be set aside.

13. Before this Court, the grounds taken by the appellant have not been disputed by the learned counsel appearing on behalf of respondents.

14. It is noticed that the legal opinion in the said case was taken sometimes in the month of May, 2022 and file was sent for approval to the higher authorities. It is stated that the Office Superintendent of Trans Ganga City Office retired on 31.07.2022 in fact to process the entire files makes an office noting and only after the said process the file is looked into by the Regional Manager who grants his approval and subsequently the file travels to the accounts department for financial sanction. Unfortunately the Finance and Accounts officer, posted in Trans Ganga Office had suffered from heart attack on 03.09.2022 on account on which no further action could be taken in the said matter till November, 2022 when he rejoined his duties.

15. This court is of the considered view that the appellant was able to demonstrate sufficiently the reasons for not filing the appeal within prescribed time and accordingly the delay should be condoned.

16. Learned counsel for respondent also have not opposed the application for condonation of delay either before the Tribunal

or before this court..

17. Hon'ble the Supreme Court in the case of **Collector, Land Acquisition, Anantnagh and another Vs. MST. Katiji and others, 1987 SCC 107**, held as under:

"3. The legislature has conferred the power to condone delay by enacting [Section 51](#) (Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately 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 is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

18. Hon'ble the Supreme Court in the case of **Raheem Shah & Anr. Vs. Govind Singh & Ors, Civil Appeal No. 4628 of 2023, decided on 24.07.2023**, held as under:-

"4. This Court in the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107 has held as hereunder: "The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately 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 is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

5. The above decision expressing the intention of justice oriented approach percolating down to all the courts was rendered nearly three decades ago but unfortunately the case on hand demonstrates the pervading insensitive approach, which apart from continuing the agony of the litigants concerned has also unnecessarily burdened the judicial hierarchy which after going through the entire process will

have to set the clock back, at this distant point in time and prolong their agony. If only the court concerned had been sensitive to the justice oriented approach rather than the iron-cast technical approach, the litigation between the parties probably would have come to an end much earlier after decision on the merits of their rival contention."

19. The Apex court has time and again emphasised the importance of substantive rights of the people and has held that when technicalities of the procedural law are pitted against rights of private parties, the former should yield to the latter. Following the same line of reasoning, this court is of the opinion that when any authority/tribunal/court is deciding any appeal then the question of condonation of delay should be construed liberally rather than taking a parochial approach. A pedantic approach while deciding on matters where condonation is in question shall only act as an obstacle in the interest of justice and thus, while exercising its discretion the courts should apply their mind and ponder upon whether there existed a legitimate cause due to which the said delay became inevitable.

20. Considering the facts of the present case, this Court is of the opinion that the grounds taken by the appellant were not discussed by the Tribunal and accordingly, no finding with regard to sufficient cause was arrived at in its proper spirit as per the aforesaid judgment

21. In light of the above, sufficient grounds exist for condonation of delay. The appellants have been able to demonstrate the reasons for the delay, where on one occasion their Finance and Accounts Officer suffered a heart attack while the Regional Manager who grants approval retired. It is further noticed that the delay was between 62 to 242 days and the same having been adequately explained and already discussed by this Court, substantial grounds exist for condonation of delay. Accordingly, all the appeals are **allowed**. The appeals are remanded to the Real Estate Regulatory Authority for being decided on merits.

23. Let the appeals be decided expeditiously in accordance with law without giving any unnecessary adjournments.

(Alok Mathur, J.)

Order Date :- 4.10.2023

Ravi/