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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 29.01.2025

+ **LPA 599/2017 CM APPL. 33668/2017 & 33670/2017**

DELHI DEVELOPMENT AUTHORITYAppellant
Through: Ms Manika Tripathy, SC and Mr
Ashutosh Kaushik, Advocate.

versus

KISHAN CHAND SAINI (D) THR HIS LRsRespondents
Through: Mr Sitab Ali Chaudhary, Mr Gufran
Ali, Ms Chitra Sharma and Mr Sadik,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

VIBHU BAKHRU, J. (ORAL)

1. The appellant - Delhi Development Authority (hereafter *the DDA*) has filed the captioned appeal impugning an order dated 16.09.2015 (hereafter *the impugned order*) passed by the learned Single Judge, whereby the writ petition being W.P.(C) No.8129/2013 captioned *Kishan Chand Saini v. Delhi Development Authority*, was allowed. The DDA was directed to allot a MIG plot to the respondent through mini draw within the period of twelve weeks, against the respondent's application No.72748 (FDR No.20921) under Rohini Residential Scheme, 1981, as per his entitlement and policy.

2. The DDA also impugns an order dated 29.05.2017, whereby the



Review Petition preferred by the DDA being Review Petition No.227/2017 seeking review of the aforesaid impugned order dated 16.09.2015, was rejected.

3. The DDA has filed CM APPL. 33670/2017 seeking condonation of delay in assailing both the impugned order as well as the order dated 29.05.2017. The delay in filing the said appeal is 64 days in respect of the order dated 29.05.2017 passed in Review Petition No.227/2017 in W.P.(C) 8129/2013 and 685 days in respect of an appeal against the order dated 16.09.2015 passed in delivered aforesaid petition.

4. It is material to note that the DDA's review petition (Review Petition No.227/2017) seeking the review of the impugned order dated 16.09.2015 was rejected on the ground of delay. The review petition was filed after a delay of 577 days and the learned Single Judge found that there were no grounds to condone the said delay.

5. The Review Petition was founded on the basis that the MIG flat allotted to the respondent earlier (which was disposed by him) was more than 67 square metres and, therefore, he was not entitled for allotment of MIG plot. The respondent had in unambiguous terms asserted that the MIG flat allotted to him earlier (No.131-B, First Floor, Pocket-6, Phase-II, Kondli Gharoli, Delhi) was less than 67 square metres, and, therefore, under the given policy, he was not disentitled for an allotment of a second plot/unit. The assertion made in the writ petition was not controverted by the DDA at the material time.

6. In the aforesaid context, the learned Single Judge rejected the Review



Petition by an order dated 29.05.2017, which reads as under:-

“Present application has been filed for review of the order dated 16th September, 2015.

Present application is supported by an application for condonation of delay of 577 days. However, this Court finds no ground for condonation of 577 days delay in filing the present review application.

It is pertinent to mention that the review petition is premised on the basis that the first allotment to the petitioner was of an area more than 67 sq.mtrs. As the first allotment to the petitioner was also of a DDA flat, it is not understood as to why this fact was not pointed out in the counter affidavit and why it took the DDA 577 days to file a review petition.

Consequently, the present application is dismissed on the ground of delay.”

7. It is clear that the learned Single Judge had not rendered any final decision or returned a finding regarding the dispute, which would have a trapping of any final determination. In view of the above, the Letter Patent Appeal against an order dated 29.05.2017 is not maintainable.

8. The said issue is no longer *res integra*. The Division Bench of this court in ***Government of NCT of Delhi & Others v. Mool Chand Sharma: Neutral Citation No.:2013:DHC:1042-DB*** had considered catena of earlier decisions and held as under:-

“8. The expression ‘judgment’ used in the Letters Patent came to be interpreted by the Supreme Court in ***Shah Babulal Khimji vs. Jayaben***, AIR 1981 SC 1786 as under:

113. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-sec. (2) of Section 2 cannot be



physically imported into the definition of the word “judgment” as used in Cl. 15 of the Letters Patent because the Letters Patent has advisedly not used the term “order” or “decree” anywhere. The intention, therefore, of the givers of the Letters Patent was that the word “judgment” should receive a much wider and more liberal interpretation than the word “judgement” used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word “judgment” has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:-

(1) A final judgement- A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves, nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.

(2) A preliminary judgment – This kind of a judgment may take two forms – (a) where the trial



Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the trial Judge is concerned and, therefore, appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g. bar of jurisdiction, res judicata, a manifest defect in the suit absence of notice under Sec. 80 and the like, and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.



(3) Intermediary or interlocutory judgment –Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us in the judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not corrected by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote.

120.We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:
(10) An order granting review.

122. We have by way of sample laid down various illustrative examples of an order which may amount to judgment but it is not possible to give such an exhaustive list as may cover all possible cases. Law with its dynamism, pragmatism and vastness is such a large ocean that it is well-nigh impossible for us to envisage or provide for every possible contingency or situation so as to evolve a device or frame an exhaustive formula or strategy to confine and



incarcerate the same in a straitjacket.

11.When the Court dismisses a review petition, it merely takes a view that no new important matter or evidence as contemplated in Rule 1 of Order 47 of the Code of Civil Procedure has been discovered, there is no mistake or error apparent on the face of the record and there is no other sufficient reason for reviewing of the judgment/order in question and, therefore, declines to exercise the jurisdiction vested in it to review its judgment/ decree or order. Such an order cannot be said to be an order deciding or adversely affecting, directly and immediately, any valuable right of the parties and, therefore, would not qualify as, 'judgment' within the meaning of clause 10 of Letters Patent, in terms of the decision of the Supreme Court in ***Shah Babulal Khimji*** (supra). Consequently, no appeal against an order dismissing the review application is maintainable either under Code of Civil Procedure or under Clause 10 of Letters Patent.

9. The Supreme Court in a recent decision in ***Rahimal Bathu & Others v. Ashiyal Bevi*** :2023 SCC OnLine SC 1226 has held as under:-

“25. What is clear from the above observations is, that where the review is allowed and the decree/order under review is reversed or modified, such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated, reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law. But where the review petition is dismissed, there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the original decree and not the order



dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

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29. For all the reasons above, we are of the considered view that where an appealable decree has been passed in a suit, no revision should be entertained under Section 115 of the CPC against an order rejecting on merits a review of that decree. The proper remedy for the party whose application for review of an appealable decree has been rejected on merits is to file an appeal against that decree and if, in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed.

30. In view of our conclusion above, the revision of the respondent against rejection of her application for review of an appealable decree ought not to have been entertained by the High Court. The appeal is, therefore, allowed. The impugned judgment and order of the High Court is set aside.”

(emphasis added)

10. Thus, in view of the above, the issue to be addressed is whether the delay of 685 days in filing the above appeal is required to be condoned.

11. As observed by the Supreme Court, the time spent by the appellant in pursuing the review petition may be justified in certain cases and may be excluded. However, in the present case, the review petition was filed on 16.05.2017, which was dismissed on 29.05.2017. Thus, the time spent by the DDA in pursuing the review petition is barely thirteen days. Even if the said period is excluded, there is a delay of about 672 days in appealing the order



dated 16.09.2015.

12. It is relevant to refer to the application filed by the DDA for explaining the 'sufficient cause' that had prevented the DDA from filing the appeal within the time. A plain reading indicates that there is no explanation, whatsoever for the period of delay from the date of the passing of the impugned order and the date of filing of the review petition. The explanation is largely confined to the delay beginning from the date on which the review petition was dismissed. A plain reading of the said explanation also indicates that it does not project any sufficient cause for explaining the delay. The DDA merely states that after the order dated 29.05.2017 was passed in Review Petition No.277/2017, the file was sent to the legal department and the counsel was consulted on the said issue. Based on the information, it was decided to file an appeal. After handing over of the file to the counsel, the counsel took sometime to prepare the appeal and filed the same after receipt of the instructions. It is stated that "during this period also sometime was lost in reasonable manner particularly keeping in mind the issues involved".

13. Interestingly, apart from the above, there is no explanation as to the reasons for the delay. Not even a rudimentary endeavour is made to explain the delay of each day. Notwithstanding the inordinate delay, the DDA claims that the delay is reasonable and is not intentional or deliberate.

14. We consider it apposite to refer to the following observations made by the Supreme Court in the decision in *Postmaster General & Others v. Living Media Limited: (2012) 3 SCC 563: -*



“29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

15. In *Union of India v. Ram Charan: 1963 SCC OnLine SC 247* the Supreme Court had observed that the expression “sufficient cause” is not required to be considered liberally solely because the party in default is government. The relevant extract of the said decision is set out below:-

“8. There is no question of construing the expression “sufficient cause” liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does



not mean that the court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement.”

(emphasis added)

16. In *University of Delhi v. Union of India: 2019 SCC OnLine SC 1634*, the Supreme Court had emphasised that delay can be condoned only if there is a reasonable explanation for the same and not because the party on default is a public body. The relevant extract of the said decision is set out below:-

24. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the appellant is public body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition, in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified.”

(emphasis added)



17. We also consider it apposite to refer to the recent decision of the Supreme Court in *State of Madhya Pradesh v. Ramkumar Choudhary: 2024 INSC 932*. In the said decision the Supreme Court has held as under:-

“5. The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the Court within limitation. In *Majji Sannemma v. Reddy Sridevi: 2021 SCC OnLine SC 1260*, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in *Ajay Dabra v. Pyare Ram: 2023 SCC OnLine SC 92* wherein, it was held as follows:

13. This Court in the case of *Basawaraj v. Special Land Acquisition Officer [(2013) 14 SCC 81]* while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard



to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.”

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of *bona fides* is attributed to the party.

5.1. In *Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir: 2024 INSC 262*, wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

“24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant



provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical



consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

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34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold."

18. Bearing in mind the settled principles for condoning the delay, we find that the DDA failed to indicate sufficient cause for delay in filing the present appeal.



19. The learned counsel appearing for the DDA submitted that the fact that the plinth area of the flat allotted to the respondent (which he sold in the year 2009) was more than 67 square metres, was discovered after the writ petition was allowed. He submits that this fact would also be relevant for considering the question of delay in filing the present appeal.

20. We find the said contention unpersuasive. The respondent had been denied the allotment of the MIG plot on the ground that he had been earlier allotted an MIG flat. The respondent had challenged the same expressly averring that the area of the MIG flat allotted earlier was less than 67 square metres and, therefore, he was not disentitled for a second allotment. This was central to the respondent's claim and remained uncontroverted. The DDA had not produced any material in the form of any allotment letter, any brochure, or any other material, which would establish the area of the flat in question. On the contrary, the assertion of the respondent is that the area of the MIG flat was less than 67 square metres – an assertion which the respondent continues standby – was never controverted. It is now contended that while determining the cost, the plinth area of the property was calculated, which was more than 88 square metres. The respondent disputes the same. It is contended that the area of the flat on which multi storey building is constructed, cannot be construed as the area of the flat allotted to the respondent. We cannot accept the contention that the DDA was not aware of the size of flats allotted to customers. The MIG flat was not one of a kind or customised for each allottee. These are flats of standardized dimensions and specifications. And, it is not possible that the DDA does not know the size of these flats, yet the DDA did not raise any such contention



before the learned Single Judge.

21. It is not necessary for this court to examine this controversy in any further detail as the threshold issue involved is whether the present appeal is within the period of limitation. However, in the context of the question of limitation, it is material to note that the respondent's assertion that the initial area of the MIG flat allotted to him was less than 67 square metres was at the core of his claim that he was not disentitled for a second allotment. And, the DDA had ample opportunities to contest the same, but had not done so.

22. Clearly, it would not be open now for the DDA to contend that on internal calculation it found that the area of the flat allotted earlier was more than 67 square metres, for seeking condonation of delay.

23. In view of the above, we find no merit in this application (CM APPL No.33670/2017) seeking condonation of delay in filing the appeal. The same is, accordingly, dismissed. Consequently, the appeal is dismissed and so are the pending applications.

VIBHU BAKHRU, J

ANOOP KUMAR MENDIRATTA, J

JANUARY 29, 2025

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Click here to check corrigendum, if any