

Kanpur Development Authority Vs. Arjun Dev Kehar

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Court : Allahabad

Decided On : Sep-20-2007

Reported in : 2008(1)AWC571

Judge : Dilip Gupta, J.

Appellant : Kanpur Development Authority

Respondent : Arjun Dev Kehar

Advocate for Def. : Sri. Pramod Kumar Jain

Advocate for Pet/Ap. : Sri. Tripathi

Disposition : Application dismissed

Judgement :

Dilip Gupta, J.

1. The Kanpur Development Authority, Kanpur (hereinafter referred to as the 'Development Authority') has filed this application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Act') for condoning the delay of two years and 305 days in filing this second appeal.

2. In support of the application, an affidavit has been sworn by Sri S.K. Jaiswal Joint Secretary (Legal) in the Development Authority and the reasons given for

condoning the delay in filing the second appeal have been mentioned in paragraph 3 of the affidavit. It has been stated that First Appeal No. 286 of 1998 out of which the present second appeal arises was pending in the Court of District Judge, Kanpur Nagar. The officer on special duty by the office note dated 3.5.2001, directed the suit clerk of the Development Authority to give the status of the aforesaid first appeal and by the office note dated 5.5.2001 it was brought to the knowledge of the Officer on Special Duty that the suit clerk had informed the Development Authority, on the basis of the information received from the clerk Kedar Ji of the panel lawyer of the Development Authority Sri Vishal Kumar, that the said first appeal was pending adjudication. It is in such circumstances that the Joint Secretary (Legal) of the Development Authority was under the bona fide belief that the aforesaid first appeal was still pending in the Court of District Judge, Kanpur Nagar even though the said first appeal had been dismissed on 28.4.2001. It has then been stated that in the month of November, 2003 for the first time the Joint Secretary (Legal) of the Development authority got knowledge of the dismissal of the first appeal and so he directed the subordinate officials for filing the second appeal before this Court but due to departmental formalities the necessary expenses to be incurred for getting the certified copies were made available to the court clerk only in the month of January, 2004. It is only thereafter that the court clerk applied for certified copies of the judgments and decrees and other papers which were made available to him in the first week of February, 2004. The pairakar of the Development Authority then contacted the learned Counsel at the Allahabad High Court for filing the present second appeal and handed over the certified copies of the relevant papers. The learned Counsel sent a letter to the Development Authority in the month of March, 2004 for sending some important papers so that the second appeal could be prepared and filed and on 23.5.2004 the pairakar handed over the papers to the learned Counsel. The second appeal was filed on 28.5.2004. It is in such circumstances that the delay of 2 years and 305 days is sought to be explained by the Development Authority. It also needs to be mentioned here that documents in support of the averments made in the affidavit have not been filed though in paragraph 3 (ii) it has been stated that the original note referred to in the paragraph shall be produced at the time of arguments, if required.

3. A counter-affidavit has been filed to the affidavit filed in support of the delay condonation application. The averments made in the affidavit filed in support of the delay condonation application have been denied. It has been stated that Sri Vishal Kumar was not even appearing as a counsel but the inquiry was sought to be made from his clerk. In fact, Sri Suman Nigam advocate was appearing as the counsel for the Development Authority in the first appeal and after the dismissal of the first appeal on 28.4.2001 he had even filed an application under his signatures for obtaining certified copies of the judgments and decrees of both the Courts below through register No. 112 on 14.8.2001. The certified copies of the judgments and decrees were made available to Sri Nigam on 4.9.2001 as is evident from the register. In support of this averment, a copy of the certificate issued by the counsel who inspected the file on 13.7.2007 has been annexed. It has, therefore, been stated that enquiry was made on 3.5.2001 from the clerk of a counsel who was not even appearing in the first appeal, apart from the fact that the Development Authority in its affidavit had not even mentioned how it was keeping track of the case prior to 3.5.2001 as the first appeal itself had been dismissed on 28.4.2001. It has also been stated that the alleged office notes have not been annexed and even if it assumed that the Joint Secretary (Legal) of the Development Authority got to know about the dismissal of the first appeal only in November, 2003 then too the second appeal was filed after a lapse of seven months for which no proper explanation has been given.

4. A rejoinder-affidavit sworn by Sri Lala Ram, Tehsildar in the Development Authority has been filed to the aforesaid counter-affidavit. It has been stated that Sri Vishal Kumar was the son of Sri Suman Nigam and both the persons were looking after the cases on behalf of the Development Authority and though it is correct that the certified copies were applied for and procured by the office of Sri Suman Nigam in the month of September, 2001 but his clerk who was authorized to communicate to the Development Authority did not communicate the same as the certified copies were misplaced and 'till date the office of Mr. Suman Nigam could not communicate with regard to dismissal of first appeal'. It has also been stated that when the Joint Secretary (Legal) of the Development Authority came to know about the dismissal of the first appeal in November, 2003, he immediately requested the panel lawyer Sri K. K. Bajpayee for applying for the certified copies

of the judgments and decrees for filing the second appeal which were made available to the Development Authority in first week of February, 2004. The subsequent delay is sought to be explained by stating that during the preparation of the case learned Counsel of the Development Authority in the High Court asked for certain documents as a result of which some more time was spent in collecting the same and then the second appeal was filed. It has also been stated that 'now it is settled law that the delay condonation application should normally be allowed if there is no deliberate inaction on the part of the person who is seeking delay condonation'.

5. I have heard Sri M. C. Tripathi learned Counsel appearing for the Development Authority and Sri Pramod Kumar Jain learned senior counsel assisted by Sri Amitabh Agrawal for the respondent.

6. Sri Tripathi learned Counsel for the appellant urged that the delay in filing the second appeal has been sufficiently explained in the affidavit filed by the Development Authority. He emphasized that the officer on special duty of the Development Authority was vigilant inasmuch as on 3.5.2001 he had directed the suit clerk of the Development Authority to give the status of the first appeal who gave the information that the first appeal was pending. He submitted that in such circumstances it cannot be said that the Development Authority was not keeping a strict vigil of the first appeal and as soon as the Joint Secretary (Legal) of the Development Authority came to know about the dismissal of the first appeal in November, 2003, immediate steps were taken for filing the second appeal. In support of his contention, he has placed reliance upon the decisions of the Supreme Court in *G. Ramegowda, Major etc. v. Special Land Acquisition Officer, Bangalore* : *State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr.* 2000 AIR SCW 2389 : 2000 (3) AWC 2.29 (SC) (NOC); *State of Haryana v. Chandra Mani and Ors.* and a judgment of this Court in *State of U.P. and Ors. v. Jai Prakash Singh and Ors.* (2003) 2 UPLBEC 1329.

7. Sri Pramod Kumar Jain learned senior counsel for the respondent, however, submitted that the first appeal was dismissed on 28.4.2001 and even if the averments mentioned in the affidavit of the Development Authority are taken to be

true, it was only on 3.5.2001 after the dismissal of the first appeal that the officer on special duty had sought information from his suit clerk regarding the status of the first appeal but nothing has been pointed out as to what happened prior to this or after this date. He further submitted that though it was stated in the counter-affidavit that the Development Authority had not annexed the relevant notes, yet these notes were not brought on record. Sri Jain laid emphasis on the fact that the counsel for the Development Authority who was conducting the first appeal had even applied for the certified copies of the judgments and decrees on 14.8.2001 and the same had been made available to him on 4.9.2001 but not only was this fact not mentioned in the affidavit of the Joint Secretary filed in support of the delay condonation application but even an application was not given as to why the said counsel did not inform the Development Authority about the dismissal of the first appeal. He further submitted that the Development Authority has not mentioned how the Joint Secretary (Legal) acquired knowledge of the dismissal of the first appeal in November, 2003 and even after this date the officers of the Development Authority acted in a lethargic manner in filing the second appeal after a delay of seven months. In support of his contention he has placed reliance upon *State of U. P. and Anr. v. Kamal Mustafa Khan and Ors.* ; *Commissioner of Wealth Tax v. Amateur Riders Club*. 1994 Supp (2) SCC 603 and *State of U.P. and Ors. v. Mohd. Nahid and Ors.* .

8. I have examined the averments made in the affidavits and have also considered the submissions advanced by the learned Counsel for the parties but before proceeding to examine the factual averments, it is necessary to consider how the Courts have interpreted the expression 'sufficient cause' occurring in Section 5 of the Limitation Act which requires the applicant/appellant to satisfy the Court that there was 'sufficient cause' for not preferring the appeal within the stipulated period.

9. The Courts have repeatedly pointed out that whether or not there is 'sufficient cause' for condonation of delay is a question of fact dependent upon the facts and circumstances of the case and that the discretion should not be defined or crystallised to convert it into a rigid rule of law. In *State of Nagaland v. Lipok Ao and Ors.* 2005 AIR SCW 1748, the Supreme Court pointed out that proof of

'sufficient cause' is a condition precedent for exercise of the discretion vested in the Court and what counts is not the length of the delay but the sufficiency of the cause. The shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Supreme Court also observed: The provisions contemplate that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

10. In *Brij Indar Singh v. Kanshi Ram* AIR 1917 PC 156 the Privy Council opined that the true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.

11. In *Shakuntala Devi Jain v. Kuntal Kumari*, the Supreme Court observed that unless want of bona fides, inaction or negligence as would deprive a party of the protection of Section 5 is proved, the Court may in its discretion condone the delay.

12. In *G. Ramegowda (supra)*, the Supreme Court condoned the delay in filing the appeal on account of the protracted correspondence between the Government pleader and the Government as this persuaded the Court to hold that the Government was not negligent. It is in this context that the Supreme Court observed: There is, it is true, no general principles saving the party from all mistakes of its counsel, if there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking

condonation of the delay.

The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the Judicial verdict, these facts which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on Governmental functioning - of course, within a reasonable limit- is necessary if the judicial approach is not rendered unrealistic. It would, perhaps be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process.

(Emphasis supplied)

13. In the case of Kameshwar Prasad Singh (supra) the Supreme Court condoned the delay in filing the special leave petition as it found that the orders could not be challenged in time due to fear of contempt and various coercive orders passed by the High Court against the officials of the State.

14. In Chandra Mani (supra), the delay of 109 days in filing the appeal was not condoned by the High Court. The Supreme Court found that in the bureaucratic methodology delays take place on account of note making, file pushing and.

therefore, in such cases certain amount of latitude is permissible. It is in this context that the Supreme Court observed:

It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court-be it by private party or the State-are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. 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 altitude 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 process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors, which are peculiar to and characteristic of the functioning 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 authorize the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the 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.

15. In *Jai Prakash Singh* (supra) a Division Bench of this Court condoned the delay in view of the decisions of the Supreme Court in *G. Ramegowda, Major* (supra) and *Chandra Mani* (supra).

16. The inference that can be drawn from the aforesaid judgments is that there is no general principle for condoning the delay in filing the appeal and each case has to be considered on its own facts but proof of 'sufficient cause' is a condition precedent for exercise of the discretion vested in the Court and the true guide for the Court to exercise the discretion is to find out whether the appellant acted with reasonable diligence. It has also been pointed out that though 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so that generally delays in preferring appeals are condoned but where there is gross negligence or deliberate inaction or lack of bona fides imputable to the party seeking condonation of delay, the application should be rejected. However, while dealing with delay condonation applications moved on behalf of the Government, the facts which are peculiar and characteristic of the functioning of the Government, can be taken into consideration and a certain amount of latitude is permissible. The Courts have also emphasised that the Government must take the responsibility for the acts or omissions of its officers, except where the Government makes out a case that public interest has suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It has also been pointed out that there is no general principle saving the party from all mistakes of the counsel and if there is negligence, deliberate or gross inaction or lack of bona fides on the part of the counsel, the discretion to condone the delay should not be exercised.

17. It is, therefore, in the light of the aforesaid principles and taking into consideration the facts of this case, that it has to be determined whether there was 'sufficient cause' for not preferring the second appeal within the stipulated time.

18. It is not in dispute that Civil Appeal No. 286 of 1998 that had been filed by the Development Authority was dismissed by means of the judgment and decree dated 28.4.2001 and the present second appeal was filed in this Court on 28.5.2004 after a delay of two years and 305 days.

19. This delay is sought to be explained by the Development Authority by stating that pursuant to the office note dated 3.5.2001, the Joint Secretary (Legal) of the Development Authority was informed through the note dated 5.8.2001 that the suit clerk had informed the Development Authority on the basis of the information received from the clerk of the panel lawyer Sri Vishal Kumar that the civil appeal was pending adjudication and it was only in the month of November, 2003 that the Joint Secretary (Legal) of the Development Authority for the first time got to know about the dismissal of the civil appeal whereupon he directed his subordinate officials for filing the second appeal in this Court, which after some procedural delay was filed on 28.5.2004.

20. There are, therefore, two gaps for which 'sufficient cause' has to be shown by the Development Authority. The first is the gap between 28.4.2001 when the first appeal was dismissed and November, 2003 when it is alleged that the Joint Secretary (Legal) of the Development Authority acquired knowledge of the dismissal of the first appeal. The second gap is between November, 2003 and 28.5.2004 when the second appeal was presented before this Court.

21. The aforesaid averments made in the affidavit of the Joint Secretary (Legal) of the Development Authority to support the first gap are not only delightfully vague but also convey an impression that the Development Authority has not acted in a bona fide manner and in its attempt to justify its gross negligence and inaction has made attempts to withhold relevant information from this Court.

22. The long gap between 28.4.2001 and November, 2003 is sought to be explained by the Development Authority by stating that its counsel did not inform it that the first appeal had been dismissed on 28.4.2001. In such circumstances, it was necessary for the Development Authority to have placed some material before this Court for it to come to this conclusion but this has not been done and only bald averments have been made. Allegations have been made against its counsel and

the least that could have been done in such circumstances was to have placed the letter sent to the counsel requesting him to explain why he could not inform it about the dismissal of the first appeal and the explanation given by the counsel but that has not been done. This is for the simple reason that the allegation that has been made against the counsel of the Development Authority that he did not inform the Development Authority about the dismissal of the first appeal is very unusual, particularly when it has come on record that the counsel had in fact applied for the certified copies of the judgments and decrees of both the Courts below on 14.8.2001 and these copies were also made available to him on 14.9.2001.

23. This apart, in paragraph 6 (iii) of the rejoinder-affidavit it has been stated that when the Joint Secretary came to know about the dismissal of the first appeal in November, 2003, he requested his panel lawyer Sri K. K. Bajpai for obtaining certified copies of the judgments and decrees. The most normal course that should have been adopted in such a situation would have been to contact the counsel engaged in the first appeal but surprisingly this was not done and even an explanation has not been offered as to why the earlier counsel was not immediately contacted. All that has been stated in the rejoinder-affidavit is that 'till date the office of Sri Suman Nigam could not communicate with regard to the dismissal of first appeal'. This only shows after acquiring knowledge in November, 2003, the Development Authority did not even contact Sri Suman Nigam to find out whether the first appeal had been decided and why he did not inform it about the dismissal of the first appeal. It is indeed strange that such serious allegations have been made against the counsel that he did not inform the Development Authority about the dismissal of the first appeal but none of the officials thought it proper to contact the counsel. This conduct of the officials of the Development Authority further compels the Court to believe that the Development Authority was informed by the counsel and such an allegation has been made only for the purpose of explaining the delay.

24. The Development Authority has a team of officers and clerks to supervise the various litigations. The affidavit does not disclose whether any clerk of the Development Authority was present or had knowledge of the date when the

hearing of the first appeal took place and whether the Development Authority had knowledge of the date of judgment or the clerk was present in the Court when the judgment was delivered on 28.4.2001. It also does not even disclose whether the lawyer engaged by the Development Authority in the first appeal had intimated the Development Authority about the decision. The notes dated 3.5.2001 and 5.5.2001 on which reliance has been placed by the learned Counsel for the Development Authority have also not been annexed even in the rejoinder affidavit in spite of the clear averment made in the counter-affidavit that the notes dated 3.5.2001 and 5.5.2001 had not been annexed in the affidavit filed in support of the delay condonation application. They have also not been produced before the Court at the time of hearing of the application even though in paragraph 3 (ii) of the affidavit, it was stated that the original note shall be produced before the Court at the time of arguments, if so required.

25. The information that is sought by the officers of the Development Authority is generally in writing and, therefore, even if it is assumed that the office note dated 3.5.2001 was put up by the Officer on Special Duty of the Development Authority requiring the suit clerk to give information about the pendency of Civil Appeal No. 286 of 1998 then too in such situation the Development Authority should have placed the correspondence exchanged between the suit clerk and the counsel engaged by the Development Authority in Civil Appeal No. 286 of 1998 about the pendency of the appeal as the note dated 5.5.2001 mentions that the suit clerk had informed, on the basis of the information received from the clerk of the panel lawyer of the Development Authority Sri Vishal Kumar, that the civil appeal was pending adjudication. This fact assumes significance because it is only from these notes that it is sought to be contended by the Development Authority that the officials believed that the civil appeal was pending adjudication even though it had been dismissed earlier on 28.4.2001. Even the communication of the suit clerk sent to the person making the note dated 5.5.2001 has not been placed on record. It was, therefore, obligatory upon the Development Authority to prove from the documentary evidence that it was duly informed by the suit clerk or the lawyer engaged to conduct the civil appeal that it was pending. The averments made in the affidavit for explaining this long period from 28.4.2001 to November, 2003 are without any corroborating documentary evidence and do not inspire confidence.

They cannot, therefore, be believed.

26. An important factor which needs to be mentioned at this stage is that in the affidavit filed in support of the delay condonation application, the Development Authority has not even disclosed the name of the counsel who had been actually engaged by it to conduct the civil appeal and only an impression is sought to be conveyed that Sri Vishal Kumar was the counsel. It is from the counter-affidavit filed to the delay condonation application that it has come to light that Sri Suman Nigam was the counsel engaged by the Development Authority in First Appeal No. 286 of 1998 and he had not only applied for certified copies of the judgments and decrees of both the Courts below on 14.8.2001 but the said copies were also made available to him on 4.9.2001. This fact mentioned in the counter-affidavit finds support from the certificate issued by the lawyer which has also been annexed and it is only when these facts were brought to the notice through the counter-affidavit that the Development Authority in its rejoinder-affidavit sworn by the Tehsildar has come out with a case that the clerk of Sri Suman Nigam did not communicate this fact to the Development Authority and even the certified copies of the judgments and decrees were misplaced in the office. Paragraph 6 of the rejoinder affidavit in which this fact has been stated has been sworn on the basis of personal knowledge of the Tehsildar. It was imperative for the Development Authority to have placed the necessary correspondence between the Development Authority and the counsel Sri Suman Nigam actually engaged by it to conduct Civil Appeal No. 286 of 1998 in support of this fact but no such correspondence has been placed and only a bald assertion based on the personal knowledge of the Tehsildar has been made in the rejoinder-affidavit. It is difficult to conceive how the Tehsildar could have had personal knowledge of this information.

27. It also needs to be mentioned that when in the counter-affidavit it was pointed out that Sri Suman Nigam was the counsel for the Development Authority conducting First Appeal No. 286 of 1998 and not Sri Vishal Kumar from whose clerk information was sought by the suit clerk as to whether the first appeal was pending or not, the Development Authority in the rejoinder affidavit has stated that Sri Vishal Kumar was also a panel lawyer of the Development Authority along with his father Sri Suman Nigam and both the persons were looking after the cases on

behalf of the Development Authority. The name of the counsel actually engaged by the Development Authority in First Appeal No. 286 of 1998 was still not mentioned but from the certificate dated 13.2.2007 annexed to the counter-affidavit, it is clear that Sri Suman Nigam was the only counsel who had filed vakalatnama in Civil Appeal No. 286 of 1998 and Sri Vishal Kumar had not filed any vakalatnama on behalf of the Development Authority. This document also reveals that the certified copies of the judgments and decrees were applied for by Sri Suman Nigam, Advocate under his signatures and not by Sri Vishal Kumar, advocate.

28. It is also interesting to note that the long gap between 5.5.2001 and November, 2003 has been left totally unexplained. The Development Authority has a team of officers/ clerks to monitor the litigation and there appears to be no reason why these officers/clerks of Development Authority did not contact the counsel of the Development Authority Sri Suman Nigam after 5.5.2001 even if it is assumed that the Development Authority had no knowledge of the judgment and decree dated 28.4.2001.

29. The judgment was delivered on 28.4.2001 and Sri Suman Nigam who was the counsel engaged by the Development Authority also applied for certified copies of the judgments and decrees of the courts below on 14.8.2001 after a period of almost four months. Inference can, therefore, be drawn that the Development Authority had been informed of the decision and thereafter the counsel was asked to obtain the certified copies because otherwise there appears no reason why the counsel should have applied for the certified copies of the judgments and decrees after a period of four months and that too of the trial court as well as the appellate court. This inference is not without any basis as it has been stated in paragraph 3 (v) of the affidavit of the Joint Secretary that after acquiring knowledge of the dismissal of the civil appeal in November, 2003, the Joint Secretary (Legal) directed his subordinate officials to obtain certified copies of the judgments and decrees of both the Courts below and thereafter he applied only when the expenses were made available to the court clerk in the month of January, 2004. This fact clearly shows that the certified copies of the judgments and decrees are applied only when a request is made by the Development Authority after the

money required for the said purpose is sanctioned and is made available. This implies that when the certified copies of the judgments and decrees of both the courts below were applied on 14.8.2001, the Development Authority must have sanctioned the money and it is only then that the counsel of the Development Authority in First Appeal No. 286 of 1998, Sri Suman Nigam applied for the certified copies of the judgments and decrees of both the Courts.

30. The Development Authority has come out with a case that it was only in the month of November, 2003 that the Joint Secretary (Legal) of the Development Authority came to know about the dismissal of the civil appeal. The affidavit does not mention the source from where the Joint Secretary (Legal) acquired knowledge of this fact. It is, therefore, clear that the Development Authority has again not come out with clear and categorical facts and withheld the information.

31. What must also be taken note of is the fact that if the suit clerk had wrongly informed the Development Authority, as is the case taken up in the affidavit filed in support of the delay condonation application, then certain clarification should have been taken from him as to how such a statement was made when the clerk had been specifically engaged for the purpose of conducting the various cases of Development Authority. The only answer which the counsel for the Development Authority gave to this query is that there was no evidence against the suit clerk for taking action. It is indeed surprising that this fact, upon which the entire case of the Development Authority rests and is being so vehemently pressed for condoning the delay in filing this second appeal has been found to be insufficient for even seeking a clarification from the suit clerk.

32. The inevitable conclusion that follows from the above discussion is that the Development Authority has not acted in a bona fide manner and in its endeavour to justify its gross negligence and inaction has deliberately withheld vital information from this Court.

33. Thus, keeping in mind the fact that the Courts have emphasised that where the Government moves an application for condoning the delay in filing the appeal, facts which are peculiar to and characteristic of the functioning of the Government have to be taken into consideration, then too, as pointed out above by the

Supreme Court in *G. Ramegowda*, it is difficult to conclude that the Development Authority was prevented by 'sufficient cause' for not preferring the appeal within the stipulated period. It is also not the case of the Development Authority that the delay has occurred because of acts of fraud or bad faith on the part of its officers or its officers were at cross purposes with it. It is equally important to note that if the case of the Development Authority is to be believed then its counsel Sri Suman Nigam did not inform it about the dismissal of the civil appeal. There is no explanation either from the counsel or his clerk why such information was not given to the Development Authority. Thus, if the version of the Development Authority is to be accepted, then the counsel has been negligent and there has been gross inaction and lack of bona fides on his part. Thus, even the exceptions drawn by the Supreme Court in the aforementioned cases relating to appeal filed by the Government do not help the Development Authority.

34. While deciding an application for condoning the delay in filing an appeal, the Court must also keep in mind the observations made by the Supreme Court in *Commissioner of Wealth Tax v. Amateur Riders Club* 1994 Supp (2) SCC 603, wherein the delay of 264 days was not condoned and they are:

For quite sometime in the past, this Court has been making observations as to the grave prejudice caused to public interest by appeals brought on behalf of the Government being lost on the point of limitation. Such observations have been made for over a few years in the past. But there seems to be no conspicuous improvement as is apparent in the present petition which is filed in November, 1993..After the earlier observations of this Court made in several cases in the past, we hoped that the matters might improve. There seems to be no visible support for this optimism. There is a point beyond which even the Courts cannot help a litigant even if the litigant is the Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation

offered for the delay in this case merely serves to aggravate the attitude of indifference of the revenue in protecting its common interest. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

The application for condonation of delay is, accordingly, dismissed. The special leave petition is, therefore, dismissed as barred by time.

35. A Division Bench of this Court in Kamal Mustafa Khan (supra) after considering the aforesaid decision of the Supreme Court in Chandra Mani (supra) did not condone the delay and it was observed:

We are of the opinion that no doubt greater latitude has to be shown by the Court to the State Government while considering whether the delay in filing the appeal should be condoned or not, but the above observation of the Supreme Court cannot be interpreted to mean that the State Government is at liberty to file an appeal whenever it so chooses. In above decision of the Supreme Court the delay was of 109 days in filing the appeal whereas in the present case the delay is of 385 days, i.e., almost 13 months.

36. The aforesaid decision of the Division Bench was followed in Mohd. Nahid (supra) and it was observed:

These facts reveal the casual, irresponsible and shoddy manner in which such appeals are being treated by the State Government. There is inexplicable delay between 10.2.1999 when the S.L.A.O., wrote a letter to the Secretary, Revenue Department, U. P. for seeking permission to file an appeal, and the receipt of the permission on 24.8.1999. This delay of more than six months is totally unexplained. Thereafter also there is no proper explanation for filing of the appeal is said to have been received from the State Government and September, 2000 when the appeal was actually filed, i.e., unexplained delay of more than one year.

37. It, therefore, follows that the Development Authority has not been able to establish that it acquired knowledge of the dismissal of the civil appeal only in

November, 2003.

38. In this view of the matter it is not necessary to examine the contention of the learned Counsel for the respondent that even the long delay of seven months from November, 2003 to 23rd May, 2004 has not been satisfactorily explained. However, the decisions relied upon by the learned Counsel for the appellant that delays do occur in the movement of Government files help to explain the delay of seven months from November, 2003 when the Joint Secretary (Legal) is said to have acquired knowledge of the dismissal of the civil appeal and if this was the only delay then the Court would have been inclined to condone the delay as this delay can be said to be satisfactorily explained but this is not the position in the present case as it is the delay before November, 2003 that has not been satisfactorily explained.

40. Thus, for all the reasons stated above, the application for condoning the delay is liable to be rejected and is, accordingly, rejected.

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