

Delhi Development Authority Vs. Ramesh Kumar

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Court : Delhi

Decided On : Nov-09-1995

Reported in : 1996IAD(Delhi)431; 61(1996)DLT99; (1996)112PLR25

Judge : M.J. Rao and; Anil Dev Singh, JJ.

Acts : [Limitation Act, 1963](#) - Schedule - Sections 5; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : Civil Miscellaneous Appeal No. 1481 of 1994 and First Appeal No. 99 of 1994

Appellant : Delhi Development Authority

Respondent : Ramesh Kumar

Advocate for Pet/Ap. : Inderjeet Sidhu and; Tarun Sharma, Advs

Judgement :

Anil Dev Singh, J.

(1) This is an application of the Dda under Section 5 of the Limitation Act read with Section 151 Civil Procedure Code for condensation of delay of 182 days in filing an appeal (F.A.O. OS-99/94) from the order of the learned Single Judge dated September 24, 1993 in Suit No. 229A/89, whereby the learned Single Judge made the award a rule of the Court. As already noted, the order of the learned Single

Judge is dated September 24, 1993 while the appeal was filed on April 5, 1994. In the application it is stated that Mr. Pradeep Dewan, Advocate who conducted the matter before the learned Single Judge informed the Executive Engineer of the appellant that the objections to the award had been dismissed and consequently the award was made a rule of the Court. It is further averred that the said Advocate had informed the Executive Engineer that a certified copy of the judgment had been applied for by him and the same would be sent to the department as soon as it was made available. It is claimed that the Executive Engineer sent a note to the Superintending Engineer informing him of the judgment. The Executive Engineer recorded his comments in the file on November 15, 1993 and sent the same to the Chief Engineer on December 2, 1993. It is stated that the Chief Engineer recommended the filing of an appeal against the order of the learned Single Judge subject to obtaining the opinion of the Legal Department of the appellant and the advice of Mr. Pradeep Dewan, Advocate who was dealing with the case. Accordingly, the file was sent to the Law Department on December 8, 1993. Thereafter the file was transmitted to the Executive Engineer with the direction that he should immediately contact Mr. Pradeep Dewan, Advocate for getting the appeal drafted and for obtaining the certified copies of the judgment and Decree Pursuant to the direction, the Executive Engineer contacted Mr. Pradeep Dewan on December 23, 1993 for getting the certified copies of the judgment and decree. The Advocate, however, informed the Executive Engineer that he had sent the 'certified copy of the judgment and decree' to the Law Department on December 8, 1993. The Executive Engineer thereafter contacted the Law Department but the file was not traceable. The Executive Engineer again contacted the Advocate on January 6, 1994 and requested him to furnish further details about the file as the same was not available in the Law Department. On January 27, 1994 Mr. Naresh Kumar, Accountant of the appellant applied for certified copies of the judgment and decree sheet. The copies were obtained by the Accountant on March 25, 1994. Thereafter the papers were sent to Ms. Anusuya Salwan, Advocate for drafting the appeal. It is claimed that the appeal was filed on April 4, 1994 as according to the appellant the Court was closed from March 26, 1994 to April 3, 1994 on account of vacation. This is the Explanation which has been submitted by the Dda for the delay in

filing the appeal.

(2) To say the least, the Explanationn is wholly unsatisfactory. It is not stated as to when Mr. Dewan, Advocate of the appellant for the first time applied for certified copies of the judgment and decree sheet. It is also not stated that on which date the ExecutiveEngineer,DDAsentanotetotheSuperintendingEngineerinforminghim of the said judgment. But note was recorded on November 15, 1993, while the judgment was delivered on September 24, 1993. No Explanationn is furnished as to why the Executive Engineer took two months in recording his note in regard to the judgment of the learned Single Judge. Again between November 15,1993, when the note was recorded by the Executive Engineer, and December 2, 1993 when the file was sent to the Chief Engineer, there are 17 days. Why this time was consumed, there is no Explanationn. It is also not mentioned as to when the Chief Engineer recommended that an appeal be filed. After the recommendation of the Chief Engineer the file was sent to the Law Department on December 8,1993. Thereafter the file was sent to the Executive Engineer for contacting Mr. Pradeep Dewan, Advocate for the purpose of drafting the appeal and obtaining certified copies of the judgment and decree. However, no date is given as to when the file was sent to the Executive Engineer. Assuming that the file was sent to the Executive Engineer promptly on December 8, 1993, there is no Explanationn worth the name why the Executive Engineer contacted the panel lawyer on December 23,1993 after a gap of about 15 days. It is claimed that the panel lawyer Mr. Dewan informed the Executive Engineer that he had sent certified copies of the judgment and decree sheet to the department on December 8, 1993 but no affidavit of the Counsel has been filed in support of the assertion. Finally the copies of the judgment and decree sheet were obtained on March 25, 1994 but the record shows that appeal was actually filed on April 5.1994. It is claimed by the appellant that the Registry was closed from March 26,1994 to April 3,1994. We find that the Registry was open on April 2,1994. If that is the case, then filing the appeal on April 5,1994 will not give any advantage to the appellant of the intervening vacation. thereforee, the entire period from March 26, 1994 to April 4, 1994 will be counted for the purpose of limitation.

(3) In the circumstances, we are of the opinion that the delay in filing the appeal has not been properly explained by the appellant. It appears that the appellant has been grossly negligent in filing the appeal beyond the period of limitation.

(4) Learned Counsel for the appellant submitted that the delay should be condoned as it occurred on account of governmental and departmental procedures. According to the learned Counsel, there was sufficient cause for condensation of delay. We are conscious of the decision of this Court in Union of India v. R.P. Builders in F.A.O.(OS) 167/93 dated May 27, 1994 where departmental delay was condoned. However, benefit of that judgment cannot beavailed of by the appellant as in the present case the delay in filing the appeal has not been satisfactorily explained. Even the administrative delays in filing the appeals have to be properly explained. If there is any negligence or indolence on the part of the appellant or its officers in pursuing the matter, the same cannot be condoned merely because the appellant is a State or Government Undertaking. There cannot be two laws of limitation, one governing the State and the other governing individuals/subjects. In view of the foregoing reasons, the application is dismissed. Consequently, the appeal also fails and the same is rejected.

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