

S.A. Builders Vs. Delhi Development Authroity

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Court : Delhi

Decided On : Aug-19-1996

Reported in : 1996VAD(Delhi)153; 63(1996)DLT732; 1996(39)DRJ332

Judge : Lokeshwar Prasad, J.

Acts : [Limitation Act, 1963](#) - Sections 5

Appeal No. : Interim Application No. 9643 of 1991 and Suit No. 1526A of 1991

Appellant : S.A. Builders

Respondent : Delhi Development Authroity

Advocate for Pet/Ap. : Manmohan and; V.K. Sharma, Advs

Judgement :

Lokeshwar Prasad, J.

(1) This Order will dispose of the application (IA 9643/91), filed by the respondent Delhi Development Authority (hereinafter referred to as 'the respondent DDA') under Section 5 of the [Limitation Act, 1963](#) (hereinafter referred to as 'the Limitation Act') for condoning the delay in filing the objection? on behalf of the respondent Delhi Development Authority under Section 30 & 33 of the Arbitration Act, 1940 (hereinafter referred to as 'the Arbitration Act').

(2) The facts relevant for the disposal of the above mentioned application, briefly stated, are that the arbitrator Shri G.R. Hingorani filed the award Along with the proceedings in the Registry of this Court. On arbitrator's filing the award Along with the proceedings, statutory notice was issued to the parties directing the parties to file objections, if any, within the prescribed time limit. 2.1 The limitation for filing an application for setting aside an award or getting an award remitted for re-consideration under Article 119(b) of the Limitation Act is 30 days from the day the notice of the filing of the award is served. In the present case, notice of the filing of the award was served on the petitioner and also on the respondent Delhi Development Authority on 27.05.1991. No objections to the award have been filed on behalf of the petitioner. However, the respondent Dda has filed objections under Section 30 & 33 of the Arbitration Act with the prayer that the award made by the learned arbitrator be set aside and remitted back to the arbitrator for re-appraisal on the basis of the submissions made by the respondent Delhi Development Authority in the objection petition. 2.2 Since the objections to the award, by the respondent Dda, were not filed within the prescribed time limit, the respondent Delhi Development Authority also filed the present application (IA 9643/91) under Section 5 of the Limitation Act with the prayer that delay, in filing the objections on behalf of the respondent Dda, be condoned and the objection petition be taken on record.

(3) In the application, filed under Section 5 of the Limitation Act it has been stated by the respondent Delhi Development Authority that the delay in filing the objection is mainly on two grounds, namely, inadvertent misplacement of the file in the office of the concerned Executive Engineer of the Delhi Development Authority despite due care and attention and secondly, lapse on the part of the concerned counsel of the respondent DDA. Along with the application the respondent Delhi Development Authority has filed the supporting affidavits of the concerned counsel Shri V.K. Shali, Advocate and also that of the concerned Executive Engineer, namely, Shri S.K. Jain.

(4) Reply to the above mentioned application has been filed on behalf of the petitioner. In the reply filed on behalf of the petitioner it is stated that the present application, filed on behalf of the respondent Dda, is not maintainable and is,

therefore, liable to be rejected. On merits it is stated that it is wrong that despite due care and attention, taken in handling the file, the same was misplaced or got mixed up with some other files as alleged or otherwise. It is stated that the plea taken by the respondent Delhi Development Authority in the present application is frivolous and thus requires no favourable consideration by this Court. It has been prayed that the present application, for condensation of delay, be dismissed with costs.

(5) I have heard the learned counsel for the parties at length and have also carefully gone through the documents/material on record. On behalf of the applicant/respondent DDA) the matter was argued by Shri V.K. Sharma, Advocate whereas on behalf of the non- applicant (petitioner) arguments were advanced by Shri Manmohan, Advocate. During the course of arguments, the main thrust of the learned counsel for the applicant/respondent Dda was that the delay on the part of the respondent Delhi Development Authority in not filing the objections in time was due to the fact that the file in question, which was a very- thin file, containing objections only, got mixed up with other files in the office of the Executive Engineer and in that process was misplaced and could not be traced out despite best efforts made by the concerned officials of the respondent Dda and that the same could be recovered only on 21.7.91. On 21.7.91 the Chief Engineer of the respondent Delhi Development Authority signed the objections and the file containing the objections was delivered in Chamber No. 426 of Delhi Development Authority on 22.7.91 itself so that the same could be collected by the panel lawyer and objections could be filed on 22.7.96. He further submitted that the counsel for the respondent Delhi Development Authority got the file on 22.7.91 at 4.00 p.m. when he went to Chamber of Delhi Development Authority i.e. Chamber No. 426 in the afternoon to collect the Dak received during the course of the day. On 22.7.91 the objections could not be filed because by the time the counsel for the Delhi Development Authority could get the file filing had already been closed. 23.7.91 was general a holiday and thus in the normal course the objections should have been filed on 24.7.91 i.e. the next working day. However, the objections could not be filed on 24.7.91 due to an inadvertent lapse on the part of the panel lawyer who forgot to bring the file from his residence. Accordingly, the objections could be filed on 25.7.91. The learned counsel for the applicant/respondent Delhi Development

Authority submitted that the applicant/ respondent Dda has thus shown sufficient cause for condoning the delay and the delay in filing the objections be, therefore, condoned as prayed.

(6) The learned counsel for the non-applicant/ petitioner while making his submissions submitted that in the instant case notice of the filing of the award, as per applicant's own case, was served on the respondent on 27.5.91 and as such objections should have been filed on or before 26.6.91. He further submitted that the applicant/respondent Delhi Development Authority has not offered any Explanationn for the delay between 26.6.91 to 8.7.91 though as a matter of fact the applicant/ respondent is under an obligation to explain 'each day's delay'. The learned counsel for the non-applicant/petitioner submitted that the applicant/ respondent Delhi Development Authority has failed to show 'sufficient cause' within the meaning of Section 5 of the Limitation Act and the present application filed by the applicant/respondent Delhi Development Authority deserves to be dismissed with costs.

(7) The only question requiring consideration for the decision of the present application is as to whether the applicant/respondent Delhi Development Authority has shown 335 'sufficient cause' within the meaning of Section 5 of the Limitation Act for not filing the objections on behalf of the respondent Delhi Development Authority within the prescribed time limit. What constitutes 'sufficient cause' cannot be laid down by hard and fast rules. In case *New India Insurance Company Limited V. Smt. Shanti Mishra* : [1976]2SCR266 the Supreme Court held that discretion given by Section 5 of the Act should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression 'sufficient cause' should receive a liberal construction. In case *Brij Inder Singh V. Kanshi Ram* AIR 1917 Pc 156 it was observed by their lordships of the Privy Council that true guide for a Court to exercise the discretion under Section 5 of the Act is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain V. Kuntal Kumari* : [1969]1SCR1006 the Supreme Court has held that unless want of bonafides of such inaction or negligence as would deprive a party of the protection of Section 5 of the Limitation Act is proved, the application must not be thrown out or any delay cannot be refused to be

condoned. The Supreme Court in case *Silanti Prasad Gupta V. Dy. Director of Consolidation and others* (1981) (Supp) Scc 73 has held that whether or not there is 'sufficient cause' for condensation of delay is a question of fact depending upon the facts and circumstances of the particular case. In case *O.P. Kathpalia V. Lakhmir Singh (dead)* reported as : AIR 1984 SC1744 their lordships of the Supreme Court have held. that if the refusal to condone the delay results in grave miscarriage of justice, the same would be a ground to condone the delay. The observations of the Supreme Court in case *Collector, Land Acquisition Anantnag and other V. Mst. Katiji & others* reported as : (1987)ILLJ500SC are of utmost significance in so far as the above aspect is concerned. In the above said case their lordships of the Supreme Court have held:- 'The legislature has conferred the power to condone delay by enacting S.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 realised 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 336 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 malafides. 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.' 7.1 Equally important and far reaching are the observations made by the Supreme Court in a recent decision in case State of Haryana V. Chander Mani & others reported as : 2002(143)ELT249(SC) wherein their lordships of the Supreme Court have held:-

'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 condensation 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 evenhanded manner. When the State is an applicant, praying for condensation 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 officer/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.'

7.2 The position which emerges out as a result of the above discussion is that 'sufficient cause' must be a cause which is beyond the control of the party invoking the aid of Section 5 of the Limitation Act. In other words the cause for delay in making the application, which by due care and caution should have been avoided, will not be a 'sufficient cause'. Where, however, no negligence nor inaction, nor

want of bonafides can be imputed to the applicant, a liberal construction of the section is to be made in order to advance substantial justice.

(8) As regards the negligence of the counsel the Supreme Court in case *Lain Mata Din V. A. Narayanan* : [1970]2SCR90 has held that there is no general proposition that mistake of counsel by itself is always a 'sufficient cause' for condensation of delay. It is always a question whether the mistake was bonafide or was merely a devise to cover an ulterior purpose. In the above context, the law laid down by the Supreme Court in case *G. Ramegowda Major etc. v. Special Land Acquisition Officer Bangalore* : [1988]3SCR198 , is equally significant. In the above said case their lordships of the Supreme Court have held:- '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. thereforee, 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 factors which are peculiar to and characteristic of the functioning of the Government.'

(9) Thus, while considering the question of negligence or inaction on the part of the counsel, resulting into delayed pursuit by a litigant of his remedy, the Court besides considering the standing and status of the counsel has also to take into consideration the circumstances under which such a default/mistake is committed and absence of negligence or inaction so as to brand the conduct as one in good faith while holding that the default/negligence on the part of the counsel would or would not be a 'sufficient cause' under Section 5 of the Act and as already stated while deciding the above question the approach of the Court has to be liberal with the paramount consideration that there is no miscarriage of justice.

(10) In .the light of the above stated legal position I shall now consider the present application filed by the respondent Delhi Development Authority for condensation

of delay. At the very outset I may observe that there can be no denial of this fact that the applicant/respondent D.DA falls within the definition of the word 'the State' as defined in Article 12 of the Constitution and that the functioning of the applicant/respondent Delhi Development Authority is not 'individual' but 'institutional'. In the application the main reasons advanced are the alleged lapse in the office of the concerned Executive Engineer of the applicant/respondent Delhi Development Authority where the file in question got mixed up with other files and in that process was misplaced and thereafter the alleged lapse on the part of the counsel for the Dda Mr. V.K. Shali who inadvertently forgot to bring the file from his residence to Court. The applicant/respondent Dda, in support of the above pleas, has filed the affidavits of the concerned Executive Engineer and that of the concerned Advocate Shri V.K. Shali. The non applicant/ petitioner, in the reply filed to the above said application, nowhere specifically has disputed the correctness of the above facts. There is only a bald denial. The applicant/respondent Dda in the present application has categorically stated that the file in question, which was mis placed in the office of the Executive Engineer of the respondent Dda, could be recovered only on 21.7.91. As already stated the concerned Executive Engineer has also filed an affidavit in support of the application and in the absence of any cogent material to the contrary I see no reason to disbelieve the above plea taken by the respondent DDA. From the contents of the application it is further apparent that right from the day the applicant/respondent Delhi Development Authority could recover the file in question on 21.7.91, the applicant/respondent Delhi Development Authority took steps in the matter with utmost promptitude. The objections in question instead of being filed on 24.7.91 could be filed on 25.7.91 due to inadvertent and bonafide lapse on the part of the counsel for the respondent Delhi Development Authority who forgot to bring the file on 24.7.91 from his residence to Court. The concerned Advocate Shri. V.K. Shali has also filed a supporting affidavit in support of the above plea of the applicant/respondent DDA.

(11) As already stated, during the course of arguments the learned counsel for the non-applicant/ petitioner submitted that the applicant/respondent Dda is not entitled to discretionary relief of condensation of delay as each day's delay has not been explained by the applicant/respondent Dda, more particularly there is no

Explanationn in regard to period from 26.6.91 to 8.7.91. In my opinion, in the facts and circumstances of the present case there is hardly any substance in the above submission of the learned counsel for the non applicant/petitioner. The expression 'everyday's' delay must be explained' does not mean that a pedantic approach should be made. The above doctrine has to be applied with a rational common sense and in a pragmatic manner. In my above views I stand fortified by a decision of the Supreme Court in case Collector Land Acquisition Ananthnag V. Mst. Katiji & others reported as : (1987)ILLJ500SC .

(12) In view of the above discussion, in my opinion, the applicant/respondent Dda has shown 'sufficient cause' within the meaning of Section 5 of the Limitation Act for not filing the objections under Section 30 & 33 of the Arbitration Act within the prescribed period and, therefore, the application (IA 9643/91 under Section 5 of the Limitation Act) deserves to be allowed. However, for the inconvenience caused to the non-applicant/petitioner, the non-applicant/petitioner can be duly compensated by way of costs.

(13) In the result, the application (IA 9643/91 under Section 5 of the Limitation Act for condensation of delay in filing the objections on behalf of the respondent under Section 30 & 33 of the Arbitration Act) is allowed subject of payment of costs. Costs fixed at Rs 2,500.00 , awarded to the non-applicant/ petitioner.

(14) The application stands disposed of in above terms.

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