

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CONDL No. 305/2017

Dated: 4th of October, 2023.

Abdul Rashid Dar

... Appellant(s)

Through: -

Mr Shabir Ahmad Najar, Advocate.

V/s

State of Jammu & Kashmir and Ors.

... Respondent(s)

Through: -

Mr Sajjad Ashraf Mir, GA; and
Mr Syed Reyaz Khawar, Advocate with
Mr Abid Hameed, Advocate.

CORAM:

**Hon'ble Mr Justice Tashi Rabstan, Judge
Hon'ble Mr Justice Rahul Bharti, Judge**

(JUDGMENT)

(Tashi Rabstan-J):

01. The instant application has been filed on behalf of the applicant/ appellant, who was the respondent No.8 in the writ petition, seeking condonation of 645 days delay in filing the letters patent appeal against a judgment dated 11th of December, 2015 passed by the learned Single Judge in SWP No. 25/2010 filed by the writ petitioner, who is now the respondent No.5 herein.

02. The precise ground taken in the application is that the applicant was never ever served by the writ court and, therefore, he was neither aware about the pendency of the writ petition nor of the passing of the impugned judgment by the learned Single Judge. Since, the knowledge of the case related development has come to the notice of the applicant at a belated stage, as such, the present application is filed seeking condonation of delay in filing the desired letters patent appeal against the impugned judgment so passed by the learned Single Judge, of which the applicant/ appellant feels aggrieved.

03. Objections to the instant application stand filed on behalf of the non-applicants/ respondents, resisting and controverting the averments made in the application.

04. We have heard the learned counsel for the parties and have perused the pleadings on record. We have also have gone through the writ court record.

05. From the record, it is discernible that initially notice, at pre-admission stage, was issued to all the respondents in the writ petition on 12th of January, 2010, including the respondent No.8/ the applicant herein. However, despite service of the said postal notice, none had appeared before the writ court on behalf of the respondent No.8 even after expiry of the statutory period. Accordingly, the respondent No.8 was deemed to have been served.

06. Subsequently, the writ petition was admitted to hearing on 9th of December, 2011 and, accordingly, post admission notice was also issued and addressed to all the respondents in the writ petition.

07. As per the note of the Registry dated 14th of February, 2012, post admission notice was served on all the respondents, including the respondent No.8/ applicant herein. The Registry, in terms of its note dated 30th of March, 2012, reported that none had caused appearance on behalf of the respondent No.8/ applicant herein despite deemed post admission-service.

08. Coming to the contents of the application in hand, admittedly, there has been a long-running delay of 645 days in filing the appeal, but no satisfactory explanation has come forward on that count except for routine play of words and phrases. No doubt, a liberal approach is meant to be adopted in the matter of condonation of delay provided there is no deliberate negligence/ inaction or lack of *bonafides* on the part of the applicant. But, in the instant case, the applicant, at his pleasure, took his own time to formulate an opinion that the appeal is to be filed. It has

nowhere been stated as to by what the applicant was prevented earlier to take such a decision.

09. It cannot be disputed that the law of limitation has to be applied with its intent and purpose as prescribed. The Courts cannot come to the aid and rescue of an indolent applicant, whose application for condonation of delay does not even spell out sufficient cause. The approach of the applicant in making such application is casual and cryptic and taking it for granted that condonation of delay in legal matters is a matter of just demand and supply.

10. The law laid down by the Hon'ble Supreme Court in case reported as '*AIR 2011 SC 1237*' enunciates the aforesaid principle and it lays down as follows:

“..... 3/ This appeal emanates from the judgement of the Division Bench of the Guahati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) in Misc. Case No. 1569 of 2007 in W.A.No. 72020 of 2006. The appeal filed by the Union of India was dismissed by the High Court because of inordinate delay of 239 days. The Division Bench of the High Court, while dismissing the appeal, has observed as under:

“We have gone through the contents of the petition. The delay occurred because of the respondents took their own sweet time to reach the conclusion whether the judgement should be appealed or not. It is not that they were prevented by any reason which is beyond their control to take such a decision in time. Even otherwise, on merits of the case also it does not appear to have any tenable ground of appeal. In the circumstances, we do not see any merits in this petition.”

4/ We have also gone through the condonation of delay application which was filed in the High Court. In our considered view, the High Court was fully justified in dismissing the appeal on the ground of delay because no sufficient cause was shown for condoning the delay.

.....

6/ The Union of India ought to have been careful particularly in filing this Civil Appeal because the Division Bench, by the impugned order, has dismissed the appeal before it on the ground of delay. It is a matter of deep anguish and distress that majority of the matters filed by the Union of India are hopelessly barred by limitation and no satisfactory explanations exist for condoning inordinate delay in filing those cases.”

11. Resort can also be had to an elaborate and a lucid judgement of the Hon'ble Apex Court, reported in '*(2013) 12 SCC 649*', the relevant excerpts of which are as under:

“..... 21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.9. (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

.....

21.12. (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

.....

31. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice.”

12. In the case in hand, the applicant has been clearly absent minded in pursuing his claim and case within time and the explanation offered for the default and delay in filing the appeal is worth not reading, lest considering. The has been drafted recklessly without giving a though to account for the dates and details of the grounds alleged in it and an easy recourse has been had with leisure and pleasure in moving the application. This appears to have been done only to scuttle the judgment dated 11th of December, 2015 passed by the learned Single Judge.

13. Viewed in the context of what has been said and stated above, we are of the considered opinion that the applicant fails to explain the long stretch delay of 645 days in filing the appeal. That being so, the application for condonation of delay in filing the appeal is rejected and, as a consequence, the letters patent appeal (LPA) shall also stand *dismissed* as barred by time.

(Rahul Bharti)
Judge

(Tashi Rabstan)
Judge

SRINAGAR

October 4th, 2023

"TAHIR"

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| i. | Whether the Judgment is reportable? | Yes. |
| ii. | Whether the Judgment is speaking? | Yes. |

