

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

+ **RSA 21/2002**

Date of Decision: 1st July, 2010

D.D.A.

..... Appellant

Through: Ms. Sangeeta Chandara, Advocate

VERSUS

ROSHAN LAL MALHOTRA

..... Respondent

Through: Mr. Dig Vijay Rai, Advocate

% **CORAM:**
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

ARUNA SURESH, J.

CM APPL Nos.63/2002 (delay in filing appeal) and 64/2002 (delay in refiling appeal) in RSA 21/2002

1. These two applications have been filed by the appellant department under Section 5 of the Limitation Act for condonation of delay in filing the appeal and condonation of delay in refiling the appeal.
2. The impugned judgment and decree is dated 4.5.1992. The main file of the case was misplaced or was found missing from the department since 5.7.1980. A part of the file was sent to the Legal Department

on 5.11.1992 for seeking opinion if any appeal was to be filed. The period of limitation for filing the appeal is 90 days from the date of the judgment and decree. The file was sent for legal opinion in about six months of the pronouncement of the judgment. Therefore, when the file was referred to legal department for opinion, the period of limitation for filing the appeal had already expired. It reached Deputy Legal Chief Advisor on 12.11.1992. Thereafter file was sent to Vigilance Department on 18.11.1992 as it was required in the inquiry, which was being conducted to fix responsibility of the person who had lost the file. File remained with the Vigilance Department till 28.07.1993. Vigilance Department retained the file for about more than eight months. The Chief Legal Advisor took final decision to file an appeal on 03.08.1993. Thereafter, the matter was entrusted to panel lawyer, for filing the appeal, on 13.08.1993. It could have been ensured by the department that the file was returned back by the Vigilance Department so as to ensure that the decision for filing of the appeal was taken at the earliest, but it seems that Joint Director, Vigilance Department retained the file for quite sometime with him for unknown reasons.

3. Intriguingly, though the case was entrusted to the panel lawyer on 13.08.1993, file was never sent by the department to the concerned lawyer. With the result no appeal could be filed. It was only on

28.09.1995 i.e. after about more than two years that the file was sent to another panel lawyer. This lawyer also did not file the appeal. The file was collected back by the Dealing Assistant on 22.7.1998 for filing reply to a complaint made by the Respondent to the Prime Minister. The concerned lawyer had retained the file with him for more than one month during which period he could have drafted and filed the appeal, but failed to do so.

4. Amazingly, instead of filing the appeal, department again referred the file to Chief Legal Advisor to decide if appeal was to be filed against the impugned order because of delay in filing the appeal and to verify if any appeal was filed by any of the earlier two panel lawyers to whom the matter was entrusted. The matter was referred to Senior Standing Counsel for seeking his advice. Senior Standing Counsel took his own time and finally gave his advice on 15.1.1999. After about 12 days of this advice the appellant decided to file an appeal.
5. Things did not end here. Appellant took about three months time to arrange the file for preparing the appeal. Senior Standing counsel received the file on 19.04.1999 only. He also did not file the appeal though he held a meeting for doing the same. In the meantime, Senior Standing Counsel seemed to have tendered his resignation.

Finally, the file reached the present counsel on 24.09.1999 i.e. after about five months of the file having been marked to the senior standing counsel. Appeal was accordingly prepared and this counsel also took about four months time to file the appeal and it was filed on 10.01.2000. It goes unexplained as to why senior standing counsel and the present counsel took such a long time to prepare the appeal and file the same in the Court. After receipt of the record, considering the substantial delay, which had already occurred in the whole process, as narrated above and the appeal having become patently time barred, could have been prepared and filed immediately thereafter.

6. The entire discussion as above not only reflects the mannerism in which file was handled by various departments of the appellant without bothering about filing of the appeal at the earliest. Unwarranted conduct of various officials of different departments who had been handling the file reflects on their callous and indifferent attitude in handling the case. Ironically, even the legal department who had first taken decision to file the appeal after getting it back from the Vigilance department thought of obtaining a second opinion if any appeal was to be filed. There was no reason for the department to review its own decision to file the appeal, taken earlier on 3.08.1993. Appellant himself, therefore, is responsible for

inordinate delay in filing the appeal.

7. True that courts are liberal in considering the applications, seeking condonation of delay where the departments are involved because of many administrative formalities and procedures which have to be followed for deciding whether an appeal has to be filed against a particular order or not. In this case it is not only the administrative delay, but also the deplorable manner in which file has been handled by various departments, the legal department, senior standing counsel and other panel lawyers which resulted into not only delay but inordinate delay in filing the appeal without any sufficient cause.
8. Appellant being an autonomous body of the Govt. seems to have taken it for granted that they were at liberty to take their own time in deciding whether an appeal is to be filed or not and that they were entitled to take their own time to prepare and file the appeal, may be after the expiry of period of limitation and seek condonation of delay.
9. As discussed above, the delay has not been only at the initial stage but at every stage i.e. legal department, vigilance department, the lawyers, again the legal department, etc. The delay in filing the appeal is for a period of 2805 days i.e. about seven years and eight months.

10. Pathetic attitude adopted by the appellant is further reflected in re-filing the appeal beyond the period of limitation. Appeal was entrusted to the counsel, who filed the appeal, on 24.09.1999. At the relevant time the concerned Clerk, whose name is not disclosed, was pre-occupied in his family matters and was frequently visiting his native village. The other clerk Ramesh Kumar allegedly after taking back the file with objections on 15.09.2000 placed the same with the bundle of files relating to the private clients and disposed of matters in the office of the lawyer. It goes unexplained as to why after re-filing of the appeal on 10.01.2000 till 15.09.2000, file was not taken from Registry for removal of the objections. After this error was discovered by the appellant, appeal was refiled on 18.12.2000 but this time the Registry did not accept the appeal stating that re-filing was delayed. Matter was refiled on 03.01.2001. Registry again found some objections which needed removal. Instead of removing the objections, allegedly the file was tagged with some files which were decided and sent back to the DDA. DDA took its own time and wrote a letter dated 01.06.2001 to the lawyer informing him about this file having been tagged with another decided file and he also returned back the appeal to be filed in the court and the appeal was refiled on 02.06.2001. Thereafter file was returned with one objection or the other and it was finally accepted by the registry on

21.02.2002.

11. Under the circumstances of this case when the delay in processing the appeal in filing and refiling is because of the indifferent attitude and irresponsible manner in which file was handled, it cannot be said that there are sufficient reasons for condoning inordinate delay in filing and refiling the appeal.
12. There is increasing tendency by various departments of the Govt. to ignore the period of limitation for filing an appeal and they take it as a matter of course that delay in filing the appeal would be condoned as and when it is presented in the Court. It is the need of the hour that this tendency is curbed. Only in genuine cases, where the court is satisfied that because of the bonafide administrative reasons delay occurred in filing the appeal, that delay should be condoned, not where movement of the file speaks volumes on misconduct of the department and their officials concerned in handling the file.
13. Hence, I find no merits in the applications, the same are accordingly dismissed.

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14. In view of dismissal of the applications for condonation of delay, this appeal is barred by period of limitation and is accordingly dismissed.

**ARUNA SURESH
(JUDGE)**

JULY 01, 2010

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