

(1) S.A.No.348/2017

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

SB: Hon. Shri Justice S.A.Dharmadhikari

Second Appeal No.348/2017

Madhya Pradesh Housing Board, Gwalior

Vs.

Shanti Devi and others

Shri R.V.S.Ghuraiya with Shri Samar Ghuraiya, learned
counsel for the appellant.

Shri Sanjay Kumar Sharma, learned counsel for the
respondents.

Whether reportable : Yes

ORDER
(23.03.2021)

This Second Appeal under Section 100 of the code of Civil Procedure has been filed by the defendant/appellant – M.P.Housing Board, who happens to the instrumentality of the State, being aggrieved by the judgment and decree dt.07.03.1998 passed by the Additional District Judge Datia (M.P.) in Civil Appeal No.29A/1990, confirming the judgment and decree dated 16.11.1989 passed by the Third Civil Judge, Class II, Datia in Civil Suit No.85-A/87, whereby the suit filed by the respondents/plaintiffs was allowed.

2. Initially, the respondents/plaintiffs had filed the suit for

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declaration and permanent injunction on the ground that they were entitled to allotment of residential plot @ Rs.1.50 per sq.ft. and Housing Board had no power to enhance the price and had also prayed for an injunction that the Housing Board be restrained from allotting the residential plots to others. A detailed written statement was filed by the appellant/defendant denying the claim.

3. On the basis of the pleadings of the parties, learned trial court recorded the evidence led by the parties and thereafter vide judgment and decree dated 16.11.1989 decreed the suit holding that the appellant/defendant shall allot the residential plot ad measuring 40 x 60 sq. ft. situated near the Bus Stand Datia @ Rs.1.50 per sq. ft. in accordance with rules within a period of two months. Being aggrieved, the appellant/defendant preferred First Appeal under Section 96 of the Code of Civil Procedure, which was dismissed vide judgment and decree dated 07.03.1998 on the ground of limitation. Being aggrieved, the present Second Appeal has been filed with a delay of 6972 days.

4. I.A.No.3154/2017, an application under Section 5 of Limitation has been filed by the appellant for condonation of delay in filing the second appeal.

5. This Court vide order dt.25.07.2017 issued notice on the aforesaid application for condonation of delay.

6. Learned counsel for the appellant has putforth the proposition that it is well settled in law that the Courts are not required to see the length of delay but has to see the sufficient cause. It is argued that in the present case the counsel for the appellant never advised to file the second appeal before the High Court and as the OIC of the case were regularly being transferred from Gwalior to other places and record was being kept by the dealing clerk, who subsequently died due to long illness, the appeal could not be filed. It is further submitted that while considering the application for condonation of delay, the approach of the courts should be liberal, judicious and litigant should not be deprived of the decision on merits, as such, the delay in filing the second appeal deserves to be given a go by.

7. In support of his contentions, learned counsel for the appellant has relied on the judgment of the Apex Court in the case of **Cantonment Board, Gwalior Vs. M/s K.L.Kochar and Co. and another** reported in **2007 (I) MPJR 70**, wherein it has been held that the Board is unknown regarding proceeding and award of Court as Advocate did not inform about proceedings. Learned counsel also placed reliance on the judgment of Apex Court in the case of **Madina Begum and**

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another Vs. Shiv Murti Prasad Pandey and others reported in AIR 2016 SC 3554 and in Madhukar and others Vs. Sangram and others reported in AIR 2001 SC 2171 and submitted that not only the question of limitation is to be considered while deciding the delay aspect but all other issues are also required to be considered. Learned counsel further relied on the judgment of this Court in the case of Pyarelal Vs. State of M.P. and others reported in 2010 (II) MPJR 10, wherein it has been held that the Court should remain cautious at the time of ascertaining whether delay was caused as a result of skillful management of some individuals to commit public mischief. Placing reliance on the aforesaid judgments, it is prayed that the delay in filing the second appeal is liable to be condoned.

8. On the other hand, learned counsel for the respondents has filed the reply to the application seeking condonation of delay. It is submitted that there is exorbitant delay of more than 19 years in filing the second appeal, i.e. the judgment and decree under challenge was passed on 07.03.1998 and the present appeal has been filed on 07.07.2017. The appellant – Board has miserably failed to explain the delay of each day. Only allegations for cause of delay have been the basis of procedural lapses for non-tendering the legal advise to file the

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appeal by any of the previous counsel engaged by the appellant Board and also shifting the burden on a poor clerk in the department, who died subsequently due to prolonged illness, which can not be taken as plausible explanation for the delay. It is settled principle of law that one who approaches the Hon'ble Court after considerable delay is required to putforth proper explanation for day to day delay. It is also submitted that the appellant has not enclosed any supporting documents with the application for condonation of delay to explain as to when for the first time it came to their knowledge about the fate of first appeal as well as when the officers have been transferred from time to time. It is not a case where such huge delay in filing the appeal has been caused due to formalities/non-tendering of legal advise but it is a callous approach of the appellant authority, due to lackluster and negligent attitude. Learned counsel for the respondent in support of his contention has placed reliance on the judgment of the Apex Court in the case of **State of M.P. and others Vs. Bherulal** as reported in (2020) **10 SCC 654** and submitted that application for condonation of delay deserves to be rejected so also the appeal is liable to be dismissed in limine.

9. Heard learned counsel for the parties.

10. A bare perusal of the application for condonation of

delay shows that the reasons for such an inordinate delay are stated as under :-

(2) That, Bhagwan Singh Kushwah Assistant Engineer M.P. Grih Nirman Datia was O.I.C. of the case, who has filed the first appeal in Add.Distt. Judge Datia, The appeal is only 76 days time barred as mentioned the para 8 of impugned Judgment dated 7/3/98. And reasons stated in application (u/S 5 limitation act supported with affidavit) was reasonable and limitation was liable to be condoned in the interest of Justice.

(3) That, 1st appellate Court has dismissed the first appeal as being time-barred. But there was no opinion of the appointed counsel of M.P.Housing Board is in record, for filling the second appeal in the Hon'ble High Court against the Judgment and decree dated 7/3/98 passed by Add.District Judge Datia.

(4) That, the Clerk of Assistant Engineer M.P.Grih Nirman Datiya deposited the file with records in record room, after pronouncing the Judgment by 1st appellate Court Datia and Assistant Engineer Datia, transferred from Datia to other place, hence the second appeal could not be filed.

(5) That, plaintiff/respondent filed the Execution proceeding, notice was issued to Executive Engineer Grih Nirman Mandal Division No.1 Gwalior. The Rajesh Pathak Advocate Datia was appointed as Counsel of the Housing Board for defending the execution proceeding. But the appointed counsel did

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not advise to file the second appeal before the Hon'ble High Court against the Judgment and decree of 1st Appellate Court-Add. District Judge Datia.

(6) That, the several O.I.C. Of the case has been transferred from Datia and Gwalior to other places, since 7.3.98 to June 2017.

(7) That, the appointed Counsel of the Housing Board has been repeatedly filed the application before the executing Court and submitting the revision or petition before the Hon'ble High Court, but they never gave the advise for filing the second appeal before the Hon'ble High Court.

(8) That, lastly matter put-up before the counsel Mahendra Kumar Jain for opinion. The Counsel M.K.Jain gave to them opinion for filing second appeal, because the Judgment and decree passed by the Trial Court is not executable and First appeal was dismissed as holding time barred.

(9) That, the Chief legal Adviser M.P.Grih Nirman and Adhosanrachana Vikas Mandal head office Bhopal appointed M.K.Jain the Counsel of Housing Board vide letter dt.20.06.2017 for filing Second Appeal before the Hon'ble High Court, said appointment letter received by Counsel on 24.06.2017. The counsel prepared the Second Appeal, application u/S 5 Limitation Act, and application u/O 41 Rule 5 C.P.C. and collected the certified copy of impugned judgment and decree dt.07.3.1998 and filed on 7.7.2017.

11. Apex Court in the case of **Bherulal (supra)** has held as under :-

2. We are constrained to pen down a detailed order as it appears that all our counselling to the Government and government authorities has fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the legislature to expand the time period for filing limitation for government authorities because of their gross incompetence. That is not so. Till the statute subsists, the appeals/petitions have to be filed as per the statutes prescribed.

3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAO v. Katiji]. This position is more than elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd. wherein the Court observed as under:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in

the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In paragraph 4, a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.”

12. Considering the pronouncement of the Apex Court in the case of **Bherulal (supra)**, period of huge delay of 6972 days, no case for condonation of delay is made out. Accordingly, I.A.No.3154/2017, an application for condonation of delay is hereby **dismissed**. As a consequence, Second Appeal is also **dismissed** as time barred.

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13. Taking into consideration the inordinate delay, the appellant being the instrumentality of the State must pay for the wastage of judicial time. This Court considers it appropriate to impose cost on the appellant-Board of Rs.20,000/- (Rupees Twenty Thousand) to be deposited with the M.P.legal Services Authority, Gwalior within a period of four weeks from the date of receipt of certified copy of this order. The said amount be recovered from the officers responsible for delay in filing the second appeal and a certificate of recovery of the said amount be also filed before the Registry of this Court within the same period, failing which the matter may be placed before the court for initiating proceedings under Contempt of Courts Act.

14. It is made clear that if the aforesaid order is not complied within time, this Court will be constrained to initiate contempt proceedings against the Commissioner, M.P.Housing Board, Bhopal.

Registry is directed to send a copy of this order to the Commissioner M.P.Housing Board, Bhopal for information and necessary action.

(S.A.Dharmadhikari)
Judge

SP