

IN THE HIGH COURT OF SINDH KARACHI

**Present:**

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Adnan Iqbal Chaudhry.

**High Court Appeal No. 219 of 2017**

[Karachi Metropolitan Corporation versus Zafar Memorial Education Society]

Appellants : Karachi Metropolitan Corporation and another through Mr. Muhammad Shaban Solangi, Advocate.

Respondent : Zafar Memorial Education Society, through M/s. Yawar Farooqi and Irfan Ali Memon, Advocates.

Date of hearing : 30-08-2018

Date of decision : 24-12-2018

**ORDER**

**Adnan Iqbal Chaudhry J. -** This appeal by the Karachi Metropolitan Corporation (KMC) is from the decree passed by a learned Single Judge of this Court in Suit No.1555/2005 (said Suit), whereby the suit of the Respondent for specific performance of an allotment of a part of an amenity plot for the purposes of running a school, was decreed in favor of the Respondent.

2. The appeal is time-barred by four (04) days, and vide CMA No.1330/2017 under Section 5 of the Limitation Act, 1908, the Appellant has prayed for condoning the delay on the ground that the Appellant is a Government organization and therefore delay occurred in the process of obtaining the requisite approval from the competent authority for appealing the impugned decree. The record shows that limitation for the appeal expired on 03-04-2017, that the formal authorization to the Additional Director Land, KMC for filing this appeal was eventually issued on 05-04-2017 and the appeal was presented on 07-04-2017. Learned counsel for the

Appellant submitted that the delay was not deliberate and that since the matter involves public property, the appeal should be decided on merits. He further submitted that since the Respondent has not filed a counter-affidavit to the application, it has gone un-rebutted and should therefore be accepted. In support of such submission learned counsel relied on the cases of *Civil Aviation Authority v. Providence Aviation (Pvt.) Ltd.* (2000 CLC 1722) and *Muhammad Malik v. Chairman, Mirpur Development Authority* (1997 CLC 480).

3. M/s Yawar Faruqi and Irfan Memon, learned counsel for the Respondent opposed the condonation of delay and submitted that since the question of limitation is one of law, the absence of a counter-affidavit does not matter. Learned counsel submitted that Section 5 of the Limitation Act, 1908 does not envisage any special treatment to Government departments; that the explanation of departmental delay does not constitute 'sufficient cause' within the meaning of Section 5; and therefore the application should be rejected outright. In support of such submission, learned counsel for the Respondent relied on the cases of *Federation of Pakistan v. Jamaluddin* (1996 SCMR 727); *Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad* (PLD 2015 SC 212); and *Khushi Muhammad v. Fazal Bibi* (PLD 2016 SC 872).

4. The question raised for determination is whether the plea of departmental delay by a Government department/organization is intrinsically incapable of being considered as 'sufficient cause' under Section 5 of the Limitation Act, 1908. In the case of *Federation of Pakistan v. Jamaluddin*, relied upon by the Respondent's counsel (*supra*), the appeal of the Government department was found to be devoid of merits and limitation was an additional ground for dismissing the same. The case of *Dr. Muhammad Javaid Shafi* was not in respect of Section 5 Limitation Act, 1908, nor did it involve an appeal by the Government. Regards the case of *Khushi Muhammad*, that too did not involve an appeal by the Government; rather the

question there was whether the principles of Section 14 of the Limitation Act could be resorted to for the purposes of determining sufficient case under Section 5 of the Limitation Act. Therefore, none of the cases cited before us are of much assistance.

5. The case-law we came across during our own research is discussed *infra*.

In the case of *Superintendent of Central Excise, Lyallpur v. Faqir Muhammad* (PLD 1958 SC 167) the Government department's petition for leave to appeal before the Supreme Court was time-barred by 57 days. Condonation of delay was sought on the ground that time was consumed in carrying out the requisite consultations with different offices and for engaging special counsel. At the hearing it was also urged that the appeal involved questions of public importance which would also affect a great number of similar cases. The Supreme Court observed that no extended period of limitation is provided for the Government as litigant; that the Government does not need any greater latitude in respect of limitation than an ordinary litigant; and that the reason advanced for the delay was not convincing. Nevertheless, the Supreme Court condoned the delay on the ground that the finding of the High Court impugned before it did require a re-examination, and that if such finding was left intact, it would create an anomaly for other litigants.

6. In the case of *Chief Land Commissioner Punjab v. Makhdoom Syed Nazeer Hussain Shah* (1975 SCMR 352) the petition for leave to appeal by the Government department before the Supreme Court was time-barred by four (04) days. The application under Section 5 of Limitation Act, 1908 stated that the delay was due to negligence of the dealing officials in the office of the Land Commission and that action had been initiated against such officials. In such circumstances, the delay of four (04) days was condoned.

7. In the case of *Secretary to Government of N.W.F.P., Agriculture Department v. Abdul Rehman, Forest Contractor* (1983 SCMR 461) the suit of the respondent to restore his agreement for exploiting a forest, was decreed in his favor. An appeal by the Government to the District Judge was time-barred. The application for condonation of delay under Section 5 of the Limitation Act, 1908 pleaded that the Government had to procure departmental approvals which caused the delay. However, the District Judge dismissed the appeal as time-barred which was maintained by the High Court in revision. But when the matter came up before the Supreme Court, the delay was condoned on the ground that questions of public importance were involved.

8. In the case of *Pakistan Post Office v. Settlement Commissioner* (1987 SCMR 1119) it was held as follows:-

“It is necessary to mention here a peculiar feature of Government litigation. No doubt, it was observed in *Province of East Pakistan v. Abdul Hamid Dariji*, 1970 SCMR 558, that in matter of condonation of delay under section 5 of the Limitation Act, the Government will not be shown extra indulgence than an ordinary litigant, and if so desired only an amendment of law was the way out. The further experience of nearly two decades after that judgment shows that the inability on the part of the Government to get such an amendment made, has been treated as an accepted and inviolable rule to refuse condonation of delay whenever the plea is raised of departmental delays; which are inherent in the procedures even if culpable negligence is not involved. A just and proper approach which was not prohibited by the rule in *Abdul Hamid Dariji's* case, is to treat the request for condonation on its own merits like that of any other litigant; and not to shut out the plea on simple formula that it is mere departmental delay negligence; because the decision itself, does not lay down such an inflexible rule. The facts of that case and the condition that each case is to be seen on its own circumstances, cannot at all be ignored. It is well-known that indiscriminate application of this decision has caused immense loss to the public exchequer wherein an innocent third party, namely, the tax-payer in ultimate analysis, suffers the loss. This is besides those cases where delays are collusive so as to avoid dictates of justice and law. Hence, a departmental delay whenever put forward as a ground for condonation of delay requires consideration on its merits and rejected or accepted accordingly, as the case may be”.

9. In the case of *Deputy Collector of Customs v. Muhammad Tahir* (PLD 1989 SC 627) the Government department's petition for leave to appeal to the Supreme Court was time-barred by 101 days and while making an obvious reference to the case of the *Pakistan Post Office supra*, the Honourable Supreme Court of Pakistan held as follows:

"It has recently been held by this Court that the petitions on behalf of the Government or Government functionaries in matters involving Government interest or public interest, the petitioners no doubt would be treated at par with ordinary citizen; but they would be given the same concessions and considerations as given to the other citizens. It has also to be observed that while examining the merits of application for condonation of delay the Court can look into the conduct of the subordinate functionaries, on whose conduct the higher policy-maker functionaries have only a remote physical control. Hence, the conduct of the lower functionaries can in appropriate cases be taken as a good ground for condonation of delay. In this case, prima facie, some of the lower functionaries, as explained in the application, seem to have misconducted in the matter of vigilance and preparation for filing of petition for leave to appeal. And further, as admitted at the Bar, departmental action is being taken against them in this behalf. This amongst others shows bona fides on Government's part. We consider it a fit one for condonation of delay. Accordingly the application in that behalf is allowed and the delay is condoned.

On merits, there is not much opposition from the caveator. The case involves very valuable property over crores of rupees and the questions raised in support of the petition are also of public importance. Learned counsel for the caveator in this behalf agitated that the respondent side has suffered due to long delay, therefore, this case needs expeditious finalization.

Keeping in view the interest of the petitioners, respondents and also the public interest we consider it a fit case for grant of leave to appeal."

10. In the case of *Town Committee, Kot Abdul Malik, District Sheikhpura v. Province of Punjab* (2001 YLR 2032) a learned Division Bench of the Lahore High Court held that sufficient cause is a question of fact that varies from case to case and therefore it should receive liberal construction so as to advance the cause of substantial justice. In that case since a huge public exchequer was involved, the

delay in filing the appeal by the Government was condoned by following case of *Muhammad Tahir supra*.

11. In the case of *Government of Punjab v. Muhammad Rafique Shah* (2013 SCMR 1468) the question before the Supreme Court was whether orderly allowance could be counted towards pensionary benefits of the respondent. The Government's petition for leave to appeal before the Supreme Court was time barred and the explanation offered was that the Government did not receive timely intimation of the impugned judgment. The delay was condoned by the Supreme Court by observing that the matter was of public importance; that it would affect a number of government employees; and that the same issue was already *subjudice* before the Supreme Court in another petition. It was observed that "Whenever this Court is faced with such a situation, it has used its discretion to condone the delay and decide the case on merits".

12. In the case of *State of Haryana v. Chandra Mani* (AIR 1996 SC 1623) decided by the Supreme Court of India, the High Court below had refused to condone a delay of 109 days in the filing of an appeal by the State and the Supreme Court of India was confronted with the question whether delay in seeking departmental approvals for filing an appeal by the State could be construed as "sufficient cause" within the meaning of Section 5 of the Indian Limitation Act, 1963. After discussing a number of precedents it was held as follows:

"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 condonation 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 even-handed manner. When the State is an applicant, praying for condonation 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 officers/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. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

13. Our research reveals that that the rejection of the Government's plea of departmental delay was originally based on the theory that the Government is better equipped and has greater resources at its disposal for preparing and conducting its cases than an ordinary litigant. That theory was revisited by the Honourable Supreme Court of Pakistan in the case of *Pakistan Post Office v. Settlement Commissioner (supra)*. In that case the Supreme Court recognized the fact that delay is inherent in departmental procedures and therefore a more pragmatic approach needed to

adopted while dealing with departmental delays as a ground for condonation of delay inasmuch as a pedantic approach results in a loss to the public exchequer which is ultimately borne by the innocent tax-payer, and in cases where delays are collusive, the dictates of justice and law may be defeated. It was therefore held that the plea that time was consumed in departmental procedures should be considered on its own merits, and if such merits so demand it can constitute sufficient cause to condone the delay.

The view taken in the case of *Pakistan Post Office* was then followed by the Honourable Supreme Court in the case of *Deputy Collector of Customs v. Muhammad Tahir (supra)* where negligence of sub-ordinate officials, who were not in direct control of decision-making officials, had put valuable Government property at stake. The Honourable Supreme Court again adopted a pragmatic approach while examining the merits of the Government's application for condonation of delay, and held that the conduct of the sub-ordinate officials can in appropriate cases be taken as a sufficient cause for condonation of delay.

The case of *State of Haryana v. Chandra Mani (supra)* shows that to safeguard the public interest, the Indian Supreme Court too has adopted the same pragmatic and justice-oriented approach while considering the Government's plea of departmental delay.

14. It is settled law that under Section 5 of the Limitation Act, 1908, the Court's power to condone delay is a matter of discretion. It is also settled that what may constitute "sufficient cause" in one set of circumstances, may not do so for another set of circumstances. For this reason it has been consistently held that events/causes/reasons that constitute "sufficient cause" under Section 5 cannot and should not be laid down by hard and fast rules lest a matter of discretion is converted to a rigid rule of law. Therefore, the expression "sufficient cause" has always been construed liberally depending of course on the circumstances of each case.

Having seen that “sufficient cause” is something which may vary from case to case, it cannot be said that time consumed in departmental procedures can never constitute sufficient cause. Given the fact that delay is inherent in the impersonal machinery of Government departmental procedures and approvals, the plea of departmental delay by the Government for the purposes of Section 5 of the Limitation Act, 1908, which plea is peculiar to the Government as opposed to an ordinary litigant, cannot be rejected out-right and requires to be considered on its own merits as so held by the Honourable Supreme Court in the cases of *Pakistan Post Office and Deputy Collector of Customs v. Muhammad Tahir supra*.

15. In the ultimate analysis, the dicta of the cases discussed above is that while considering the Government’s plea of departmental delays under Section 5 of the Limitation Act, 1908, the Court requires to approach the same in a pragmatic and justice-oriented manner, in that, where the Court is of the view that shutting out the appeal/application of the Government may affect the public, the public exchequer, public property or innocent third parties, or where the delay may have been collusive and shutting out the Government’s appeal/application will defeat the law and/or justice, the Court may exercise discretion to condone delay by treating departmental delay as sufficient cause.

16. In the instant case, the suit of the Respondent for specific performance of an allotment letter of a part of an amenity plot measuring 6266 square yards for constructing a school, was decreed. The Appellant has averred *inter alia* that the allotment of the subject plot was illegal to begin with as it was an amenity plot and could not have been allotted to any person; that the amenity plot had been earmarked for a park and no part of it could be converted to use for a school; and that the officer who had validated the challan in 2005 for an allotment made in 1994 did not have the approval of the

competent authority to do so, and that it why the challan was cancelled.

In decreeing the suit in favor of the Respondent, the learned Single Judge has held *inter alia* that even if the entire amenity plot had been reserved for a park, the allotment of a part of it for the purposes of running a school did not amount to a change in the amenity and was not unlawful because the terms of allotment required the allottee to develop and maintain the remainder of the amenity plot as a park. That finding has been assailed by this appeal. Since the questions raised by the Appellant are in the public interest and affect public property, these require consideration. In this view of the matter, we treat the explanation of the delay offered by the Appellant as sufficient cause and allow CMA No.1330/2017 by condoning the delay of four (04) days in filing this appeal, with the direction that the Chief Executive of the Appellant No.1 (Mayor Karachi) shall order departmental action against officers who were responsible for the delay.

The appeal is admitted to regular hearing. The office is directed to prepare paper books and list the matter for regular hearing according to roster.

**JUDGE**

**JUDGE**

Karachi

Dated: 24-12-2018