

**IN THE COURT OF SH. PITAMBER DUTT :**  
**ADDL. DISTRICT & SESSIONS JUDGE-CUM-PRESIDING OFFICER,**  
**APPELLATE TRIBUNAL, M.C.D., DELHI.**

**APPEAL NO. 23/ATMCD/2023**

**RUKMANI DEVI VS MCD**

**ORDER ON APPLICATION FOR CONDONATION OF DELAY.**

1. Vide this order, I shall decide the application filed by the appellant for seeking condonation of delay in filing of the accompanying appeal.
  
2. It is averred in the application that the demolition order was never received by the appellant and she was served only with the vacation notice dated 27.07.2020, issued under Section 439 of the DMC Act, against which, appellant filed an appeal being appeal no. 412/2020 but the counsel, who filed that appeal also succumbed to corona and died, after which, present counsel was engaged by the appellant, who filed his vakalatnama on 23.11.2022, on which date, he took an adjournment for inspecting the record and thereafter he could get the copy of demolition order dated 15.03.2019 on 28.10.2022 and the said appeal was withdrawn on 02.11.2022. It is further averred that thereafter counsel of appellant was not keeping well as his spinal cord developed some deficiency, for

which prolong treatment was required and he was under medical treatment, due to which delay of 78 days occasioned in filing of the accompanying appeal, which was filed on 19.01.2023. On that ground, the delay occasioned in filing of the accompanying appeal is sought to be condoned.

3. The respondent has filed reply, thereby controverted the averments mentioned in the application. It is averred that the verification date of the present appeal has been mentioned as 11.11.2022, which shows that the appeal was ready by that time but same was filed on 19.01.2023 i.e. after a delay of around 2 months from the date of preparation of appeal. All other averments have been denied. It is prayed that application may be dismissed.
4. I have heard Ld. counsel for applicant / appellant, Ld. counsel for the non-applicant / respondent and perused the application, reply thereto as well as the record.
5. The appellant has sought condonation of delay in filing the accompanying appeal under Section 5 of the Limitation Act, which is reproduced as under:-

*Section 5. Extension of prescribed period in certain cases. —Any appeal or any application, other than an*

*application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.*

6. A perusal of the above shows that the delay in filing an appeal can be condoned if sufficient cause, if any, preferring such appeal is shown by the appellant.
  
7. Vide this application, appellant is seeking condonation of delay in filing of the accompanying appeal against impugned demolition order dated 15.03.2019. The plea of the appellant for seeking condonation of delay is that the appellant was never served with the demolition order and got the copy of demolition order in the previous appeal filed against vacation notice, however, the counsel who filed the present appeal, after obtaining the copy of demolition order, got ill and was under constant

medical treatment, due to which, the accompanying appeal could not be filed within the reasonable time.

8. The appellant has annexed copy of medical prescription of Ld. counsel, which shows that he was having some deficiency in his spinal cord and was getting treatment for the same from the doctor.
9. No doubt that the verification of appeal is dated 11.11.2022 but the medical record produced by Ld. counsel of appellant shows that he was not keeping well during that period and was under constant medical treatment, due to which, accompanying appeal was filed on 19.01.2023.
10. In view of the above facts and circumstances, I am of the considered view that the appellant has assigned reason, which is sufficient to explain the delay occasioned in filing of the accompanying appeal. Accordingly, the application filed by the appellant under Section 5 of the Limitation Act for seeking condonation of delay is allowed. The delay caused in filing of the accompanying appeal is condoned.

**Announced in the Open Court,  
Today i.e. on 27.05.2024**

**(PITAMBER DUTT)  
AD&SJ-cum-P.O.  
Appellate Tribunal : MCD Delhi**