

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

APPEAL NO. 04/ATMCD/2024

SHEELA DEVI VS MCD & ANR

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 appellant was never served either with the show cause notice dated 11.08.2023 or with the demolition order dated 24.08.2023. It is further averred that the respondent carried out part demolition in the property in question on 05.10.2023, after which appellant bonafidely preferred a writ petition being W.P. (C) No. 16069/2023 before the Hon'ble High Court, wherein vide order dated 14.12.2023, the Hon'ble High Court disposed off the said writ petition with the liberty to the appellant to approach to the Tribunal. It is further averred that the Hon'ble High Court also directed the respondent not to take any punitive action against the appellant up till 12.01.2023, subject to appellant preferring an appeal before the Tribunal, on or before

03.01.2024. On that basis, the delay caused 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 appellant has admitted that the show cause notice was received by Sh. Mahesh Kumar, who is the son of the appellant, hence the plea of appellant of not receiving the demolition order is wrong. 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 24.08.2023 on the ground that demolition order was never served upon the appellant and she got copy of the same before the Hon'ble High Court on 14.12.2023 when her writ petition was disposed off and thereafter accompanying appeal was filed.
8. The respondent though controverted the said averment and claimed that the appellant was served with the demolition order but has not adduced any proof in this regard.
9. The respondent has filed the receipt of the speed post, through which the demolition order dated 24.08.2023 was sent but no tracking report is available as per the status report.

10. No endeavour was made by the Quasi Judicial Authority to serve the demolition order upon the appellant in accordance with law.

11. In view of the above facts and circumstances, I am of the considered view that the appellant has assigned sufficient cause for seeking condonation of 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 30.05.2024**

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