

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

APPEAL NO. 653/ATMCD/2023

REENA 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 on 03.09.2023, the security guard of the apartment, where appellant is living, handed over vacation notice under Section 349 Read with Section 346 of the DMC Act, thereby directing the appellant to vacate her flat as respondent was going to demolish the unauthorized construction in the form of excess coverage / deviation, existing in her flat, thereafter appellant along with her brother approached the MCD Office, Najafgarh, New Delhi on 04.09.2023, where she was apprised about the issuance of show cause notice dated 16.01.2023 and passing of demolition order dated 27.01.2023. It is further averred that the appellant requested the officials of respondent to provide copy of demolition order, pursuant to which, an uncertified copy of the demolition order was provided to her on 06.09.2023. It is further averred

that thereafter appellant consulted with her neighbors and also the President of the society, who assured her that they will talk to MCD officials but later on they informed the appellant that they were told by the officials of MCD that appellant had to approach the Court, after which the appellant approached her counsel and filed the accompanying appeal. On that ground, the delay of 28 days caused in filing of the accompanying appeal is sought to be condoned.

3. The respondent has filed reply, thereby controverted all the averments made in the application. 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. 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.

5. 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.

6. Vide this application, appellant is seeking condonation of delay in filing of the accompanying appeal against the impugned demolition order dated 27.01.2023 on the ground that she was never served with the show cause notice and the demolition order and uncertified copy of demolition order was provided to her by the officials of respondent on 06.09.2023 and then after consulting her neighbor and President of the society, the appellant approached her counsel and filed the accompanying appeal.

7. The respondent though controverted the plea raised by the appellant but has not adduced any proof to show that the demolition order was in fact served upon the appellant prior to 06.09.2023 in accordance with law.

8. The record produced by the respondent shows that the demolition order was pasted at site but no photograph of pasting is available in the record. The demolition order was also sent through speed post but as per the tracking report, same was received back by the MCD.
9. The record produced by the respondent, does not contain any proof to show that the demolition order dated 27.01.2023 was in fact served upon the appellant prior to 06.09.2023
10. 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 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 of 28 days caused in filing of the accompanying appeal is condoned.

**Announced in the Open Court,
Today i.e. on 05.06.2024**

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