

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

APPEAL NO. 224/ATMCD/2023

JAGDISH SAINI 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 appellant had received the demolition order dated 21.12.2022 on 30.12.2022 and filed reply to the same on 04.01.2023. It is further averred that the appellant was under the impression that he would be given a hearing with respect to the impugned order, however, no such hearing was accorded and on 18.04.2023, official of respondent visited the property and inquired about the same and then the appellant got apprehension and filed the accompanying appeal. As per the appellant, the appeal could not be filed within time as he was of the view that after receiving the reply of the demolition order, he would be given a hearing and thus kept on waiting for the same. On that ground, this application has been filed for seeking condonation of delay in filing of the accompanying appeal.

3. The respondent has filed reply, thereby controverted the averments mentioned in the application. It is averred that the show cause notice was duly served upon the occupier, who submitted his reply, however, despite granting various opportunities, no document was filed by the owner of the property in question to show that the construction was as per the sanction building plan. It is further averred that there is a delay of 123 days in filing of the accompanying appeal, which has not been explained. 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-applicants / respondents 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, the appellant is seeking condonation of delay in filing of the accompanying appeal against impugned demolition order dated 21.12.2022, which was received by the appellant on 30.12.2022.
8. The appellant after receiving the demolition order, instead of filing an appeal, submitted a reply on 04.01.2023 and thereafter filed the accompanying appeal on 24.04.2023.
9. The only ground mentioned in the application for seeking condonation of delay is that after filing the reply, appellant was of the view that he would be given hearing, however, no such hearing was provided and when official of respondent came for inspection at his

property, he got apprehensive and thereafter accompanying appeal got filed.

10. No sufficient cause whatsoever has been assigned by the appellant for seeking condonation of delay in filing the appeal against the demolition order, which was duly received by the appellant.
11. The appellant has though failed to assign any sufficient cause for seeking condonation of delay. However, no prejudice would be caused to the respondent, if the appeal filed by the appellant is heard on merits.
12. In view of the facts and circumstances, 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 16.05.2024**

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