

HIGH COURT OF DELHI**Bench: Justice C. Hari Shankar****Date of Decision: 24th January 2024****RSA 61/1975****ARI SINGH (DECEASED) THR. LR'S ...APPELLANT****VERSUS****UOI ...RESPONDENT**

Subject: Appeal regarding the restoration of RSA 61/1975, which was dismissed for default and non-prosecution on 10 February 1998, and the subsequent application for condonation of delay of 12845 days in filing the restoration application.

Headnotes:

Condonation of Delay – Dismissal of Restoration Application – Application for restoration of RSA 61/1975 dismissed due to delay of 25 years and 2 months – Counsel for appellant unable to provide cogent reasons for the delay – Reliance on judgments for condonation of delay found inapplicable – Court emphasizes that delay cannot be condoned without sufficient reason, rejecting the application due to lack of adequate grounds. [Paras 3-27]

Legal Representation – Counsel's Responsibility in Tracking Cases – Highlighting the duty of counsel in keeping track of cases, especially those admitted by the Court and pending for years – Court lenient in restoring proceedings dismissed in default and in delay of filing restoration petitions, but requires cogent reasons for long delays. [Para 12-14]

Precedent in Law – Individual Case Assessment for Condonation of Delay – Court notes that each case of condonation of delay must be assessed on its own merits – No universal precedent applicable, emphasizing the importance of individual case examination. [Paras 24-25]

Restoration of Appeal and Reopening of Contempt Proceedings – Dismissal of Applications – Dismissal of CM APPL. 18179/2023 for restoration of RSA 61/1975 and CM APPL. 18180/2023 for reopening of contempt petition, due to rejection of condonation of delay application. [Para 27]

Referred Cases:

- Parveen v. State of Haryana – (1996) 11 SCC 365
- Bachai v. Ram Nain – 2020 SCC OnLine All 247
- Sardar Gurtahal Singh v. Anand Singh Jagdhari – 2011 SCC OnLine All 444

Representing Advocates:

Mr. B.S. Chauhan for the appellant

None for the respondent

ORDER (ORAL)
CM APPL 18182/2023

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM APPL 18181/2023 (under Section 5 of Limitation Act - for condonation of delay of 12845 days (25 years and 2 months) in filing CM APPL. 18179/2023), CM APPL. 18179/2023 (for restoration of the RSA 61/1975) and CM APPL 18180/2023 (to reopen Contempt Application C.M. No.687/1986 in RSA.61/1975)

CM APPL 18179/2023

3. This application seeks restoration of RSA 61/1975 which was dismissed for default and non-prosecution on 10 February 1998.
4. The restoration application came to be filed on or around 17 December 2022, a quarter of a century after the appeal was dismissed.

5. The restoration application is accompanied by CM APPL. 18181/2023 which seeks condonation of delay in filing the restoration application. The period of delay has been computed in the application itself as 12845 days (25 years and 2 months).

6. Mr. B.S. Chauhan, learned Counsel for the appellant/applicant submits that the delay was occasioned because the appeal had been admitted and consigned to the regular board, as a result of which it escaped the attention of appellant's counsel who, subsequently, expired.

7. The Court has repeatedly queried of Mr. Chauhan as to the date when the counsel expired, but, except for a vague response, first that he expired about 10 years ago, and, later, that he had expired about 15 years ago, no specific date is forthcoming.

8. Mr. Chauhan has, however, placed reliance on the judgment Supreme Court in *Parveen v. State of Haryana*¹, as well as the orders passed by the High Court of Allahabad in *Bachai v. Ram Nain*² and Sardar Gurtahal Singh v. Anand Singh Jagdhari³, to support his application for condonation of delay.

¹ (1996) 11 SCC 365

² 2020 SCC OnLine All 247

9. The Court, therefore, has no option but to proceed on the basis of the assertions contained in the application to assess whether a case for condonation of delay does, or does not, exist.

10. Insofar as the ground for condonation is concerned, it is difficult to ascertain, from the application, the paragraph which actually contains the

ground for seeking condonation of delay. For the sake of completeness, therefore, paras 5 to 13 of the application may be reproduced thus:

“5. That thereafter, finally the said RSA was taken up for hearing on 10.02.1998, which was dismissed in default by this Hon'ble Court by passing the following order :

"Present : None

RSA 61/1975

This case was on the daily board yesterday. None appeared for the appellants throughout the day. Today again the same position continues. It is past 12.30 P.M. and none is present on behalf of the appellants. The appeal is dismissed in default.

February 10, 1998

*Sd/(ARUN KUMAR)
JUDGE"*

6. That besides the civil suit which ultimately came into RSA before this Hon'ble Court, against the said award, a parallel proceeding of LAC was being pursued by the appellants, their other brothers and sisters under Reference Petition U/s 18 of L.A. Act before the LAC Court vide LAC No.21/68. The said Reference

³ **2011 SCC OnLine All 444**

Petition was decided vide judgment dated 04.04.1978 by then Addl. District Judge Tis Hazari Court, Delhi”

7. That against the said judgment dated 04.04.1978, the appellants and others preferred an appeal vide RFA No.200/1978 before this Hon'ble Court. In the said RFA, it has been shown by their previous counsel that the appellants have compromised/settled the matter in the Lok Adalat held in the Hon'ble High Court on 07.07.1991 and on the basis of which, the Hon'ble Court vide order dated 22.07.1991 pleased to pass the decree in terms of the alleged Lok Adalat settlement. The said order dated 22.07.1991 is reproduced below:

“22.7.91

Present: Mr. Deepak Khosla for the appellants.
Ms. Shashi Kiran for Union of India
RFA 200/78

The parties have compromised the matter at the Lok Adalat held in the High Court on 7.7.1991. The compromise signed by the parties is on record. In the circumstances, the appeal is allowed in terms of the compromise. Let decree be drawn up in terms of the compromise. The appellants will be entitled to proportionate costs.

*Sd/Sunanda Bhandare, J
C.M. Nayar, J
July 22, 1991"*

8. That in both the matters, the respondents were the same and the subject matter in both the matters are/were the same. The respondents had played fraud upon the applicants to deprive them their legitimate rights of the subject land. Since the top officials of the DDA were facing the contempt proceedings for which CM No.687 /1986 was pending and they fraudulently got the said RFA matter settled in the Lok Adalat in the absence of the appellants held on 07.07.1991 and on the basis of which, alleged decree was drawn up by this Hon'ble Court.

9. That the applicants being laymen, upon them fraud has been committed by the respondent and officials of DDA and this fact came into the knowledge of the applicants in December, 2022 and since then they are continuously following the matter.

10. That in view of the above facts and circumstances of the case and to prevent the ends of justice, as envisaged in sub-clause (e) of Section 94 of CPC, restore the RSA in its original number, which is necessary to reopen the contempt proceedings against the contemnors as the contempt petition is a part proceedings of the said RSA and without its restoration, the contempt proceedings may not be reopened. Hence, this application.

11. That it is pertinent to mention here that the matter/disputes related to the Government or against the Government cannot be referred to and decided in the mediation as well as Lok Adalat, therefore, the alleged Lok Adalat Settlement is illegal and invalid too.

12. That the RSA was dismissed on 10.02.1998 and since the applicants were unable to take any legal steps for restoration of the said RSA because from the very beginning Ari Singh was pursuing the matter during his lifetime and the appellants were not aware about the proceedings and ultimately dismissal of the said appeal in default and the respondents have committed fraud before this Hon'ble Court upon the appellants in RFA as mentioned above.

13. That in view of the above said submissions, there is no delay in filing the application under Section 151 CPC as the appellants first came to the fraud committed by the officials of DDA as well as their previous counsel and the respondent when the appellants received the alleged Lok Adalat Settlement and other documents, thus the delay if any in filing the application is neither intentional nor deliberately, but for the reasons as explained above, which was beyond the power and control of the applicant.”

11. From the aforesaid paragraphs of the application, it is clear that the only cogent – if it may be called that – ground for condonation is that the counsel Ari Singh who was pursuing the matter from the beginning expired. When he expired is not mentioned.
12. Condonation of delay cannot be treated as a matter of right. No doubt, where petitions or appeals are admitted by this Court, it is a matter of common knowledge that, at times, they come up for hearing in the regular board after a number of years and counsel are, even with the utmost diligence, unable to keep track of the case.
13. This Court has always been lenient in restoring such proceedings if they are dismissed in default and has always been expansive in the matter of delay in filing restoration petitions in such cases.
14. That, however, is in a normal case.

15. This is a case where the restoration application was filed 25 years after the appeal was dismissed.
16. At the very least, the application had to contain some cogent grounds for the court to consider the application.
17. No such grounds are forthcoming.
18. Insofar as the decisions relied upon by Mr. Chauhan are concerned, they do not advance his case to any extent whatsoever.
19. **Parveen** was a case of criminal proceedings under the Arms Act, where the proceedings were dismissed in default as his counsel was not available to prosecute the matter. The Supreme Court noted that personal liberty was hanging in the balance and that, therefore, the court ought not to have dismissed the matter in default, but ought to have appointed an *amicus curiae* to defend the accused, in case counsel was not forthcoming.
20. It is obvious that there is no comparison whatsoever between that case and this.
21. The decision in **Bachai** merely records the fact that 28 years' delay had been condoned. The circumstances in which condonation was granted are not mentioned. Far less is the judgment any kind of an authority for the proposition that such an extended period of delay ought to be been condoned without sufficient reason.
22. Similarly, **Sardar Gurtahal Singh** is merely a case in which the Court condoned the delay and listed the matter for hearing.

23. The grounds on which the delay was condoned are not forthcoming from the decision.
24. In any case, in matters of condonation of delay, there can really be no precedent. It is for the court to examine, in every case, whether a case for condonation of delay is, or is not, made out.
25. The averments in CM APPL. 18181/2023 do not make out any case for condonation of delay of 25 years and 2 months in filing the restoration application.
26. The prayer for condonation of delay is rejected.
27. Accordingly, CM APPL. 18181/2023 is dismissed.
Concurrently, CM APPL. 18179/2023 which seeks restoration of RSA 61/1975 and CM APPL. 18180/2023 which seeks re-opening of the contempt petition which had been filed in the RSA are also dismissed.

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