HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil First Appeal No. 386/2022

1. State Of Rajasthan, Through The District Collector, District Udaipur.
2. Chief Conservator Of Forest, Wildlife, Mohata Park, Chetak Marg,udaipur.
3. Deputy Conservator Of Forest, Wildlife, Badi Road, Devali, Udaipur.

----Appellants

Versus

1. Balwant Singh S/o Shri Mohanlal Kanthaliya, Retired Regional Ii Superintendent, Jantuaalay, R/o 6 Ga 14 Ramsinghji Ki Badi, Sector Number 11,hiranmagari, Udaipur
2. Joint Director, Pension And Pensioners Welfare Department, Udaipur.

----Respondents

For Appellant(s) : Mr. D.S. Jasol, AGC

HON'BLE MS. JUSTICE REKHA BORANA

Judgment

29/09/2023

1. The present regular appeal has been filed against the judgment and decree dated 30.05.2018 passed by the District Judge, Udaipur in Civil Suit No.345/2012.

2. The present appeal has been filed with a delay of 1424 days. The application under Section 5 of the Limitation Act for condonation of delay as preferred by the appellants is reproduced as under:-

> *"1. That the appellants are filing instant appeal against the judgment and decree dated 30.05.2018 passed by the learned District Judge, Udaipur. On the basis of the grounds mentioned in the memo of appeal, appellants have very*

strong case and there are fair chances of appeal being allowed if it is heard and decided on merits.

2. That the learned court below decreed the suit preferred by the respondents vide judgment dated 30.05.2018. Thereafter, copy of the order dated 30.05.2018 alongwith opinion was sent to the State Government. The decision to lay challenge to the judgment and decree dated 30.05.2018 has been issued on 17.02.2020 and on account of Covid-19 pandemic, OIC could not contact the Government Counsel at Jodhpur.

3. That after issuance of the sanction for filing the appeal, Office-in-Charge contacted the counsel for the Department at Jodhpur on 24.10.2021 for filing appeal in the matter.

4. That the counsel dictated the appeal/stay petition as well as application u/s 5 of the Limitation Act, and therefore, the same is being filed without any further delay in the matter.

5. That with great respect, it is most respectfully submitted that the delay caused in filing the special appeal is bonafide and due to official procedure and there is no intentional or deliberate delay on the part of the appellant and therefore, the delay caused in filing the special appeal deserved to be condoned and the special appeal deserved to be heard and decided on merit.

6. That it is respectfully submitted that this Hon'ble Court as also, the Hon'ble Supreme Court of India from time to time, held that looking to the official procedure lenient view should be taken in the matter of State/Union on the point of delay and therefore, in view of the observations of the Hon'ble Courts also, the delay caused in filing the appeal is liable to be condoned.

It is, therefore, most humbly and respectfully prayed that this application may kindly be allowed and the delay in filing the special appeal may kindly be condoned and the appeal may kindly be ordered to be heard and decided on merit."

3. A bare perusal of the averments as made in the application makes it clear that no reason whatsoever, which can be termed to be sufficient or plausible for condonation of huge delay of 1424 days, has been given by the State department. Even the decision to prefer an appeal against the impugned judgment and decree dated 30.05.2018 was taken on 17.02.2020, that is, almost after a period of two years. In the case of ***Office of The Chief Post Master General and Ors. vs. Living Media India Ltd. and Ors., (2012) 3 SCC 563,*** the Hon'ble Apex Court held as under:-

> *"13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.*
>
> *Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."*

4. Further, the appeal does not deserve consideration even on merits as the impugned decree is only for an amount of Rs.61,804/- in favour of the plaintiff qua interest on the delayed pensionary amount paid to him.

5. This Court does not find any sufficient or plausible ground to condone the inordinate delay of 1424 days caused in filing the present appeal. The application under Section 5 of the Limitation Act is **dismissed**. As a consequence thereof, the appeal is also **dismissed**.

6. Stay petition also stands dismissed.

(REKHA BORANA),J

7-KashishS/-