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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 6th December, 2021

\+ **C.R.P. 89/2021 & CM APPL. 43521/2021**

SH KHALIFA CHAIN SUKH ..... Petitioner

Through: Mr. Ram Kishan Saini and Ms. Neelam Saini, Advs. (M:9868500923)

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Mr. Aschim Vachher, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present petition challenges the impugned order dated 1st October, 2021 by which the applications of the Respondent/Delhi Development Authority *(hereinafter as 'DDA')* under Order IX Rule 13 CPC and under Section 5 of the Limitation Act, 1963 (*hereinafter "Limitation Act"*) for condonation of delay, have been allowed by the Trial Court in ***CS No.152/20*** titled ***Sh. Khalifa Chain Sukh v. DDA***, thereby setting aside the ex-parte judgment/decree of the Trial Court, dated 16th November, 2019, and restoring the suit.

3. The brief facts are that a suit for permanent injunction was filed by the Petitioner/Plaintiff (*hereinafter "Plaintiff"*) against the DDA seeking a restraint order in respect of demolition of shops. The case of the Plaintiff is that he is the owner of 12 shops bearing Pvt. Nos. 1 to 12, situated over Plot No. 3A/112, Mpl. No. 11957, W.E.A, Karol Bagh, New Delhi-110005 (*hereinafter "suit property"*). The reliefs sought in the plaint are as under:

> *"It is therefore, most respectfully prayed that a decree for permanent inject may kindly be passed in favour of the plaintiff and against the defendant including its agent, servants and officials etc. retraining them from demolishing the shops in question situated over plot of land bearing No. 3A/112, Municipal No.11957, Sat Nagar, Karol Bagh New Delhi or otherwise interfering in possession in respect of the shows in question as shown 'in site plant attached."*

4. The said suit was, initially, rejected by the Trial Court on 21st October, 2018. The said order was appealed by the Plaintiff and in the appeal the matter was stated to have been remanded for fresh adjudication vide order dated 17th December, 2018. On 18th December, 2018, the Plaintiff appeared before the Trial Court and summons were sent to the DDA. The summons were served upon the DDA, however, since none appeared for DDA, on 9th September, 2019, *ex parte* evidence was recorded and the suit was decreed *ex parte* on 16th December, 2019. Upon the said order being served upon DDA, an application was filed by DDA under Order IX Rule 13 CPC along with Section 5 of the Limitation Act, in which the impugned order has been passed allowing the application of the DDA and *ex parte* decree has been set aside.

5. Ld. counsel appearing for the Plaintiff submits that no sufficient cause has been shown by DDA as to why it did not enter appearance in the suit once summons was served. He submits that DDA cannot be shown any leniency, by virtue of being a Government authority. Reliance is placed upon ***ML Mahajan v. DDA & Anr., 1992 RLR 242*** to argue that the Government cannot have a better privilege than any other party before a Court of law.

6. On behalf of the DDA, Mr. Vachher, ld. Counsel, submits that the DDA does not recognise the Plaintiff as the owner of this suit property. He submits that the land is actually Government land and eviction proceedings under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, were initiated against the occupants of all the 12 shops and a detailed order being F. No.D/7(4)Basti Reghar/96/214 dated 30th July, 2018 was passed by the Estate Officer. Pursuant to the said order, it is stated that four shops have already been demolished, in respect of one shop the proceedings are going on before the Estate Officer, and for seven shops the occupants have challenged the Estate Officer's order in appeal and there is a stay granted therein. He submits that the Plaintiff has no locus standi and cannot claim ownership in Government land. A copy of the said order has been emailed to the Court Master.

7. Heard ld. counsels for the parties. A perusal of the impugned order dated 1st October, 2021 shows that the Trial Court has gone into the question as to whether sufficient cause is established or not. The Court has noticed that there was an error in DDA's office wherein the summons was not duly recorded into the S&S-I register of DDA, which led to a situation wherein the *ex parte* decree came to be passed. The Trial Court also considers the fact that eviction proceedings have already been initiated by DDA and also takes into account the pandemic situation for which the Supreme Court had also passed orders extending the limitation period in proceedings ongoing during the pandemic period, in ***In Re: Cognizance of Limitation [Suo Motu WP(Civil) No.3/2020, dated 8th March, 2021]***. Since valuable rights were being compromised due to the *ex parte* decree, the Trial Court has allowed the application with costs of Rs.7,000/-. The reasoning of the Trial Court is

set out below:

> *"10. From the abovesaid judgment, it becomes clear that 'Sufficient cause' would mean that (i) the party had not acted in a negligent manner and there has been no want of bona fide, (ii) the defendant so acting bona fidely could not appear in court due to the facts and circumstances beyond his control (iii) he had been acting diligently in pursuing the legal remedy available to him. Whether a party had succeeded in disclosing 'sufficient cause' depends on facts and circumstances of each case and no straitjacket formula of universal application can be adopted.*
>
> *11. Now, coming to the facts of the present case and applying the principles as extracted in paragraph 10 to the present case, it appears that it is an undisputed fact and a matter of record that the defendant was duly served in the underlying case. However, due to some internal miscommunication, the factum of the said suit was never reflected in the relevant register of the department, owing to which the case file was never assigned to the counsel and the defence was never raised. It is further averred that there is a connected suit also pending in the present court which is duly contested by the defendant department which shows that the non-appearance was not due to some negligence or callousness attributable to the defendant but the same was due to miscommunication and a bona fide mistake which was not detected till 07.01.2020 when the certified copy of the decree was received by the counsel for the defendant.*
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> *Upon due consideration of all the facts and circumstances, and the cases referred by the parties, this court is of the opinion that though the summons were duly served upon the defendant, the absence of the particulars of the present case in the concerned register of the department is a sufficient cause which prevented the defendant from appearing on the date fixed for hearing to raise its defence, and is covered in the latter part of Order 9 Rule 13. As the DDA could not entrust*

the case to the empanelled counsel owing to the fact that the factum of the ongoing case was never reflected in the Register of the Department, defence could never be raised by the defendant on any of the dates in the ongoing suit, and consequently, the suit was decreed exparte. This court is of the further opinion that the department couldn't defend the case due to an innocuous error probably due to oversight by the officials/staff, which however became the reason of the nonappearance of the Defendant. In view of the observations made in the present paragraph, the Court is of the view that there was sufficient cause which prevented the defendant from appearing and contesting the suit.

12. Coming to the second application filed for the defendant for the condonation of delay, a reference may be made to the judgments filed by the parties. The essence of the abovesaid precedents, as briefly may be stated out is, that the length of the limitation is of no consequence if the same is justified by showing the sufficient cause, and that the provision of law is same for everyone but a liberal approach may be taken while dealing with a government department taking into account the internal procedural delays, red-tapism etc.

Applying these principles in the case at hand, it appears that 4 the delay in filing the application within the stipulated time as per the mandate of Article 123 of The Limitation Act, can be condoned if the cogent reasons are shown by the government department which prima facie doesn't show the want of bona fide on it's part. A detailed scrutiny of the application for condonation of delay shows that the applicant has given the account of each and every date when owing to the internal procedural for entrustment of a case file, the present file changed hands of different officers/departments. Further, it is needless to say that court has to take into account the rampant covid-19 pandemic which brought the country on a standstill. Reference may also be made to the order of Hon'ble

> *Supreme Court in Re: Cognizance for extension of limitation in suo-moto writ petitioner (Civil) No. 3/2020 dated 08.03.2021, whereby the limitation period under the law was extended. Accordingly, the court is of the opinion that it appears from the contents of the application that the delay period in filing the present application from the date of alleged knowledge i.e. 07.01.2020 to the filing of the application i.e. 17/08/20 is well explained by the applicant and the delay in filing the present application is condonable taking a measured view of the facts and circumstances of the case.*
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> *13. In view of the aforegoing lengthy discussion, the present applications U/o 9 Rule 13 CPC and Sec. 5 of the Limitation Act are allowed and disposed off accordingly. However, since a valuable right of the plaintiff in the form of ex-parte decree is frustrated, the defendant is hereby liable to pay a cost of Rs.7000/- to the plaintiff before the next date of hearing."*

8. The case of the Plaintiff is that he has ownership rights in the suit property, i.e., over all 12 shops. The plaint and other relevant pleadings are not placed on record and neither is the evidence placed on record. The *ex parte* judgment which has been placed on record shows that the only claim is on the basis of construction. A perusal of the order passed by the Estate Officer dated 30th July 2018, shows that there is a long history of proceedings wherein various occupants have been claiming rights in the land. The said order records that the property bearing No. 3-A/112, Basti Reghar, Khasra No.2592, WEA Karol Bagh, New Delhi 110005 is a public premises. It records that, even previously vide order dated 24th January 1997, the Estate Officer had assessed damages against some occupants who had even paid damages. Again, notices were sent to some further occupants and even a public notice was issued. Finally, eviction order was passed. This

sequence of events is recorded in the order dated 30th July, 2018, as below:

> "*1. Dy. Director (Lands) has proposed for the removal of the encroachment in the shape of 10-12 shops existing adjacent of the vacant plot which is DDA land. Due to this encroachment, the planning of this plot is badly suffered. This encroachment falls in Khasra No.2592, WEA, Karol Bagh,*
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> *2. The Public Premises in question is Property bearing No.3-A/112, Basti Reghar, Khasra No.2592, WEA, Karol Bagh, New Delhi-110005, measuring 13 sq, yds.*
> *Xxx*
> *4. Earlier the aforesaid Premises was in unauthorized occupation of Sh. Manoj Kumar and Sh. Puneet Kumar both Sons of Late Sh. Lekh Raj and vide Assessment Orders dated 24th January, 1997, the then Estate Officer had assessed the damages in favour of said Sh. Manoj Kumar and Sh. Puneet Kumar who, upto some time, had paid the damages also.*
> *5. However, during the public hearing of 1st October, 2012, the Noticee Smt. Babita Sharma alongwith one Smt. Suman Sharma appeared before the then Estate Officer and requested that the damages be assessed in their favour as they had purchased the superstructure existing on the aforesaid Public Premises.*
> *Xxx*
> *7. On 13th March, 2014, Smt. Babita Sharma and Smt. Suman Kumari both filed affidavits to the effect that they have been in unauthorized occupation of the aforesaid Public Premises and have been using the same for commercial purposes. Further, they requested that damages be assessed in their favour that they were willing to pay the same.*
> *Xxx*
> *10. Pursuant to the service of the aforesaid Notice, the unauthorized Occupants had appeared before the then Estate Officer on 23rd March, 2015, 11th May, 2015 and 25th April, 2016 and deposited Rs.4,80,000/- and had sought some time to deposit the damages but despite repeated opportunities the unauthorized Occupants did*

not clear the dues.

Xxx

12. Since, despite the service of subject Notice, the Noticee had not appeared, therefore, call letters/Notices were again sent to her.

Xxx

18. In her aforesaid objections, Noticeee had not at all challenged the ownership of the DDA over the aforesaid Public Premises. Rather, she has herself stated that she is in unauthorized occupation of the Public Premises and that she has been assessed to damages for the unauthorized use of the aforesaid Public Premises. However, the period from which the damages had been assessed in her favour has wrong been stated. It has further been admitted by her that the aforesaid Premises is being used by her for commercial purposes and that in the year 2014, DDA had taken an affidavit from her to the effect that she would vacate the said Premises if there is any scheme from the Planning department

19.In view of her aforesaid admissions, it is clear that the property in occupation of Noticee is Public Premises under the control and management of the DDA, Noticeee is the unauthorized occupant in the aforesaid Premises, although she had been assessed to damages, however, she has not paid the same.

20. Since, the land in question urgently required by Dy. Director (Lands) and despite opportunities, the Noticee has not paid and cleared the entire outstanding amount of damages, therefore, I, Y.S. Butola, Estate Officer-II/D, D.D.A. in exercise of my powers under Section 5 (1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 do hereby direct that the aforesaid Public Premises bearing No.3-A/112, Basti Regar, Khasra No.2592, WEA, Karol Bagh, New Delhi-110005, measuring 13 sq. yds. be immediately evicted and the vacant physical possession thereof be handed over to the D.D.A."

9. Therefore, DDA having already started eviction proceedings, and an

eviction order having been passed on 30th July, 2018 by the Estate Officer, it cannot be stated that the Plaintiff was not aware of these eviction proceedings. Clearly, the eviction proceedings were not brought to the notice of the Court when the *ex parte* judgment/decree was passed.

10. In so far as the proposition being canvassed by the Plaintiff that Government agencies cannot be treated differently in respect of whether sufficient cause was made out or not, there is no doubt that this position is well-established. However, what is concerning in this case is the fact that the land is claimed to be public land by the DDA. Even when a query is put to the Plaintiff today, ld. counsel submits that even by adverse possession, the Plaintiff becomes the owner.

11. Under these circumstances, the Estate Officer having already taken cognizance and having passed an eviction decree *qua* these very shops, DDA is entitled to be heard on merits in the suit which has been filed by the Plaintiff *qua* the suit property. The Plaintiff cannot seek to steal a march over the DDA, especially when the allegation is that the land is public land.

12. While, there is no doubt that Government Departments have to be conscious and have to react with alacrity in any suit or proceedings, the Court also has a duty to safeguard public land. The Punjab and Haryana High Court in ***Lekh Ram v. Gram Panchaayt Uleta [CRP No.1263 of 2016, decided on 11th April, 2019]***, in a case for declaration of ownership filed by a private party against the gram panchayat, set aside an *ex parte* order since public land was possibly involved and the Court found it preferable to err in favour of a public body. This in fact, followed the Supreme Court's decision in ***United Bank of India v. Sh Naresh Kumar & Ors., 1996 (6) SCC 660*** where it was held that where suits are instituted or defended on behalf of a

public corporation, public interest should not be permitted to be defeated on a mere technicality.

13. Under these circumstances, this Court does not find any error in the order passed by the Trial Court. However, in view of the delay by DDA in approaching the Court under Order IX Rule 13 CPC, the costs granted are enhanced from Rs.7,000/- to Rs.25,000/- and the same shall be paid to the Plaintiff within a period of four weeks from today.

14. Apart from this modification, the impugned order is upheld. None of the issues on merits have been considered by the Court. The same shall be adjudicated upon in accordance with law, by the Trial Court.

15. It is made clear that DDA is expected to defend the suit promptly and not seek unnecessary adjournments before the Trial Court.

16. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 6, 2021
dj/ms