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

% *Date of Decision: 11th February, 2025*

+ W.P.(C) 1408/2025

M/S JK TYRE AND INDUSTRIES LTD

.....Petitioner

Through: Mr. Ajjay Arora, Senior Advocate
with Mr. Sumit Gaur, Mr. Nitish Dubey and Mr.
Pulkit Srivastava, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Mr. Sanjay Sharma, Additional
Standing Counsel with Mr. Pradeep Suhag, Mr.
Ravi K. Chandna, Ms. Shruti A. Chandna and Mr.
Malyaj Sehgal, Advocates with Mr. Ankit Goyal,
ALO.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPLs. 6832/2025 and 6833/2025

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 1408/2025 CM APPL. 6831/2025

3. This writ petition is preferred on behalf of the Petitioner challenging the impugned order dated 03.12.2024 passed by learned District Judge-01, Patiala House Courts in HTA No. 1/2024. Challenge is also laid to the assessment order dated 28.09.2017 passed by NDMC and the consequent demand for payment of property tax in the sum of Rs.36,00,790/- raised vide bill dated 24.05.2023.
4. Issue notice.



5. Mr. Sanjay Sharma, learned Additional Standing Counsel accepts notice on behalf of the Respondent.

6. Factual matrix to the extent necessary for adjudication of this writ petition is that Petitioner Company is the registered owner of Flat No. A-2, 4th Floor, South Tower, Girdhar Apartment, 28, Ferozshah Road, New Delhi. It is averred in the writ petition that from the date of purchase of the flat, the same has been a self-occupied property of the Petitioner and has been used for its own purpose as also for temporary stay of its officials. NDMC issued a demand notice dated 05.11.2002 to the Petitioner under Section 100(1) of the New Delhi Municipal Council Act, 1994 ('NDMC Act') in respect of the flat raising a demand of Rs.3,06,229/- towards arrears of property tax.

7. It is averred that aggrieved by the demand notice, Petitioner filed W.P. (C) No. 81/2003 before this Court seeking quashing of the demand notice and to re-determine the assessment of the property tax as per directions of Division Bench of this Court in CWP No. 4118/2001 titled *Straw Products v. NDMC*. Writ petition was disposed of vide order dated 08.02.2012, quashing the demand notice dated 05.11.2002 and directing the Petitioner to appear before the Director (Tax), NDMC on 29.02.2012 for a hearing with a further direction to Director (Tax) to pass a speaking order within six weeks from the date of conclusion of the submissions. Relevant part of the order is extracted hereunder, for ease of reference:-

“6. Following the decision of the Division Bench in the case of 'L&T Ltd. (Supra)' and that of the Single Judge in the case of 'Straw Products (Supra)', the impugned demand notice dated 05.11.2002 for the assessment year 2002-03 in respect of the subject flat is quashed and set aside. The petitioner is directed to appear before the Director (Tax), NDMC, on 29.02.2011 at 3 PM for a hearing. The Director (Tax), NDMC shall



consider the submissions made by the petitioner and thereafter positively pass a speaking order within a period of six weeks from the date of conclusion of submissions under written intimation to it. A copy of the decision taken shall be placed on record by the respondent/NDMC within a period of two weeks thereafter. In case the respondent/NDMC does not pass a speaking order within the time granted hereinabove, the petitioner shall be entitled to approach this Court for appropriate orders.

The petition is disposed of.

A copy of this order be forwarded by the Registry to the Chairperson, NDMC, for perusal and compliance.”

8. In terms of order dated 08.02.2012, Petitioner was heard on 29.02.2012, however, Director (Tax), NDMC failed to pass the speaking order within six weeks, as directed and later imposed a penalty of Rs.44,429/- in the future property tax bill dated 03.09.2012. By representation dated 13.01.2014, Petitioner requested NDMC to pass a fresh assessment order and waive off the penalty as the same was in violation of order of this Court and even otherwise illegal. Despite reminders, order of this Court was not complied with and after a passage of more than five years and in a mechanical manner, NDMC passed the impugned assessment order dated 28.09.2017, arbitrarily and illegally revising existing Rateable Value (RV) of Rs.1,59,700/- to Rs.7,79,500/- w.e.f. 01.04.2001 on comparable rent basis. The order mentioned that no one appeared for hearing on 20.09.2017 *albeit* no notice of any said hearing was received by the Petitioner.

9. It is further averred that aggrieved by the assessment order dated 28.09.2017, Petitioner made representations to NDMC to pass an assessment order in consonance with the judgment in *Straw Products (supra)*, to enable the Petitioner to pay the property tax at the earliest. All this while, Petitioner was regularly depositing property tax as per its own calculations. In utter disregard to the legal provisions and judgments of this Court, NDMC issued



a demand notice dated 12.10.2023 under Section 100(1) of the NDMC Act raising a demand of Rs.34,44,890/- upon the Petitioner which was challenged in W.P. (C) 489/2024 by the Petitioner. This writ petition was disposed of vide order dated 15.01.2024 by the Court with liberty to the Petitioner to avail the appellate remedy provided in the statute. Availing the liberty granted by the Court, Petitioner filed an appeal under Section 115 of the NDMC Act being HTA No. 1/2024 challenging the demand notice dated 12.10.2023 and assessment order dated 28.09.2017. Petitioner also filed an application under Section 117 of the NDMC Act seeking condonation of delay in filing the appeal by way of abundant caution. After hearing arguments on the condonation of delay application, the same was dismissed vide order dated 03.12.2024 and consequently, the appeal was dismissed as barred by limitation constraining the Petitioner to approach this Court against the impugned order of the Appellate Court.

10. Mr. Ajjay Aroraa, learned Senior Counsel for the Petitioner submits that delay in filing the appeal was to a large extent beyond the control of the Petitioner and was a result of multiple factors. After passing of the impugned assessment order dated 28.09.2017, representative of the Petitioner repeatedly met the concerned officials and gave representations to rectify the assessment order as the same was against the judgment of the Division Bench of this Court. During the period when representations were being made, the counsel who was following up the case with the NDMC expired. Officials of the Petitioner did not have the complete files and requisite documents which they collected thereafter from different sources and in this time was consumed. In between, the work came to a standstill on account of Pandemic COVID-19 and Petitioner was not able to pursue its



remedies. Moreover, while declining to condone the delay despite showing sufficient cause, learned Appellate Court overlooked that NDMC itself did not pass the speaking order within six weeks from the date of conclusion of the submissions as directed by the Court and the assessment order was passed after more than five years on 28.09.2017 and the demand was raised only on 12.10.2023. On receiving the demand notice, Petitioner immediately approached this Court in W.P. (C) 489/2024.

11. It is further argued that the Court took notice of the crucial facts which contributed to the delay in passing the assessment order as also the factum of unfortunate demise of the counsel for the Petitioner and looking at the totality of circumstances granted liberty to the Petitioner to avail the remedy of appeal, at the same time protecting the Petitioner from any coercive action by NDMC for a period of 30 days. It is argued that the delay in filing the appeal was *bona fide* and beyond the control of the Petitioner and ought to have been condoned by the Appellate Court.

12. It is further argued that it is a settled law that where the applicant has a good case on merits and the order impugned is patently illegal or affects fundamental rights, in the given circumstances and facts of case, Courts can condone inordinate delay and in this context, reliance is placed on the judgments of the Supreme Court in *Urban Improvement Trust v. Vidhya Devi and Others*, 2024 SCC OnLine SC 3725 and *New Okhla Industrial Development Authority v. Rameshwar @ Ramesh Chandra Sharma (Dead) Through Legal Heir and Another*, 2022 SCC OnLine SC 1599. It is emphasised that the Petitioner has a good case on merits as the impugned assessment order is patently illegal and in teeth of the judgment of the Division Bench of this Court in *Mr. Ved Marwah v. New Delhi Municipal*



Council (NDMC) and Ors., 2018 SCC OnLine Del 8096, wherein it is held that proceedings initiated under Section 72 of the NDMC Act should be concluded in a reasonable period and in the present case, the assessment order was passed on 28.09.2017 while the notice under Section 72 of the NDMC Act was issued on 31.03.2001 i.e. after a gap of 16 years. Moreover, the Appellate Court failed to appreciate that after introduction of Unit Area Method w.e.f. 01.04.2009, NDMC cannot assess any property on comparative rent basis and assessment has to be by following New Delhi Municipal Council (Determination of Annual Rent) Bye Laws, 2009. It will be a travesty of justice if in light of the impugned assessment order being illegal, Petitioner is deprived of a statutory remedy to appeal and that too once this Court, cognizant of the delay, granted liberty to file an appeal *albeit* there is no doubt that liberty has to be availed in accordance with law.

13. Mr. Sanjay Sharma, learned Additional Standing Counsel appearing on behalf of NDMC strongly opposes the writ petition and submits that there is no legal infirmity in the impugned order dated 03.12.2024 and the Appellate Court has correctly declined to condone the inordinate delay of 7 years in filing the appeal. It is further submitted that a bare perusal of application under Section 117 shows that Petitioner was unable to make out sufficient cause for condonation. The plea of Pandemic COVID-19 cannot come to the aid of the Petitioner as the impugned assessment order was passed on 28.09.2017 and the Supreme Court in *Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452*, extended limitation period only in cases where limitations were expiring from 15.03.2019 onwards. The death of the counsel of the Petitioner in 2021 also cannot be the reason to justify the delay from 2017 to 2021. As for the liberty granted by this Court vide



order dated 15.01.2024, it is urged that the Court had not condoned the delay of 7 years and had merely granted liberty to avail the appellate remedy, which cannot imply that the delay was required to be condoned by the Appellate Court. It is strenuously urged that Petitioner has been a defaulter in paying the property tax as demanded by NDMC for over 7 years and even the current demand has not been met. On a pointed query, Mr. Sharma submits on instructions, that a total sum of Rs.35,28,558/- is outstanding against the Petitioner as of today.

14. Heard learned Senior Counsel for the Petitioner and learned ASC for NDMC.

15. The factual narrative that emerges from the writ petition and which is largely uncontroverted is that demand notice was issued by NDMC to the Petitioner on 05.11.2002 and aggrieved by the said notice, Petitioner filed W.P. (C) No. 81/2003 before this Court. The writ petition was disposed of vide order dated 08.02.2012 quashing the demand notice and directing Director (Tax), NDMC to grant a hearing on 29.02.2012 with a further direction to pass a speaking order within six weeks from the date of conclusion of the submissions. Liberty was granted to the Petitioner to approach the Court if the speaking order was not passed within the time granted. As a matter of fact and record, speaking order was not passed within the time granted and after a passage of over five years, NDMC passed the impugned assessment order dated 28.09.2017. Again, there was silence on the part of NDMC and demand notice was issued only on 12.10.2023.

16. As the averments in the writ petition go, Petitioner was in between representing against the assessment order through a counsel, who



unfortunately expired in 2021. Beyond a doubt, functioning of the Petitioner and NDMC was impacted on account of Pandemic COVID-19. Petitioner has also taken a stand that all this while it has been depositing the property tax as per its own assessment. As soon as the demand notice dated 12.10.2023 was received, Petitioner filed W.P. (C) 489/2024, which was disposed of on 15.01.2024 granting liberty to the Petitioner to avail the appellate remedy.

17. It is thus palpably clear that there was delay on part of the NDMC and the Petitioner both. NDMC took its own time to pass the assessment order despite a direction of the Court to pass a speaking order within six weeks vide order dated 08.02.2012 and the demand notice was issued much later on 12.10.2023. Petitioner has raised two crucial issues challenging the legality of the assessment order: (a) assessment order was passed after an unreasonable delay of 16 years from the date notice was issued under Section 72 of the NDMC Act; and (b) assessment of property tax was illegally made on comparative rent basis instead of under the Bye Laws, 2009, which were applicable from 01.04.2009. Learned Appellate Court has dismissed the application under Section 117 of NDMC Act seeking condonation of delay primarily on the ground that no plausible reason has been given by the Petitioner for the inordinate delay of 7 long years. The question that arises for consideration is whether Petitioner is deserving of condonation of delay in filing the appeal so that it is able to avail its statutory remedy against the assessment order passed 16 years after the notice under Section 72 of the NDMC Act.

18. There can hardly be any dispute on the proposition of law that law help those who are vigilant and diligently pursue their cause. It is, however,



equally well-settled that liberal approach needs to be adopted by Courts in condoning the delay when the given facts and circumstances of a case so require. In *Urban Improvement Trust (supra)*, the Supreme Court observed that the inordinate delay of 21 years in filing the writ petitions by the Respondents needs to be considered in the facts and circumstances of the case and while it is true that Courts have consistently held that undue delay in approaching the Court can be a ground for refusing relief. Courts have also recognised that in exceptional cases, where impugned action is patently illegal, delay must be condoned. Reliance was placed by the Supreme Court on an earlier judgment of the Supreme Court in *Vidya Devi v. State of Himachal Pradesh and Others, (2020) 2 SCC 569.*, wherein it was held that condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of the case and in a case where demands for justice is compelling, Constitutional Court would exercise its jurisdiction with a view to promote justice and not defeat it. In *Ramchandra Shankar, Deodhar and Others v. State of Maharashtra and Others, (1974) 1 SCC 317*, the Supreme Court held that the contention of the Respondent that the delay of more than 10 or 12 years in filing the petition was sufficient to disentitle the Petitioners to any relief would not prevail since the rule that Court may not inquire into belated and stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and that there is no inviolable rule that whenever there is delay, Court must necessarily to refuse the entertain the petition and each case must depend on its own facts.

19. Recently, the Supreme Court in *Delhi Development Authority v. Tejpal and Others, (2024) 7 SCC 433*, observed as follows:-



“28. The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritised over technicalities, [Raheem Shah v. Govind Singh, (2023) 18 SCC 764 : 2023 SCC OnLine SC 910, para 6] as one motivation underlying such rules is to prevent parties from using dilatory tactics or abusing the judicial process. Pragmatism over pedanticism is therefore sometimes necessary — despite it appearing liberal or magnanimous. The expression “sufficient cause” should be given liberal construction so as to advance substantial justice. [Lonand Grampanchayat v. Ramgiri Gosavi, 1967 SCC OnLine SC 105, para 4.]

29. In addition to “sufficient cause”, Section 5 also requires that such cause must be shown within the prescribed period. To satisfy the latter condition, the applicant must show sufficient cause for not filing the appeal/application on the last day of the prescribed period and explain the delay made thereafter. [Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39, para 8] Causes arising after the culmination of the limitation period, despite being sufficient in substance, would not suffice for condonation given this second prong of Section 5 of the Limitation Act. However, the applicant shall not be required to prove each day's delay till the date of filing such appeal/application. [Ummer v. Pottengal Subida, (2018) 15 SCC 127, para 14 : (2019) 1 SCC (Civ) 113]

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We do not feel that these consequences further the ends of limitation law. As discussed earlier in para 28, the law of limitation is intended to curb the evil of deliberate or negligent laxity in legal proceedings, which is not the case here. Hence, the larger interest of justice mandates us to condone the delay in the present batch of cases. The consequential relief, after condonation of delay, is however dealt with in Part E below.”

20. Coming to the present case, it cannot be held that Petitioner was not vigilantly prosecuting its cause. Writ petition was filed in 2003 challenging the assessment and demand of property tax which was disposed of on 08.02.2012. Petitioner followed up the matter with NDMC to implement the order and pass a speaking order and to assess the property tax afresh. The assessment order was passed only on 28.09.2017 and the demand notice was issued on 12.10.2023. Petitioner again assailed the assessment order and the demand notice by filing W.P. (C) 489/2024, which is disposed of on 15.01.2024 as an alternate statutory remedy of appeal was available and



liberty was granted to the Petitioner to avail of the same. As noted above, Petitioner has challenged the assessment order on two legal issues, which may go to the root of the matter and therefore, there is merit in the contention of the Petitioner that having a good case on merit, Petitioner should not be thrown as a baby out of the bathwater. As held by the Supreme Court, justice oriented approach must be prioritized over technicalities and the expression 'sufficient cause' should be given liberal construction to advance substantive justice, especially when an applicant has a good case on merit, which the Petitioner contends it does. Therefore, in the facts and circumstances of this case, I am inclined to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India to condone the delay in the interest of justice to enable the Petitioner to challenge the assessment order and the consequential demand notice.

21. Mr. Arorra, learned Senior Counsel, on instructions, submits that if the matter is remanded back for consideration of the appeal on merit, Petitioner is willing to deposit 75% of the alleged outstanding due of property tax in the sum of Rs. 35,28,558/- and Petitioner be put to terms as to costs.

22. Accordingly, this writ petition is allowed. Delay in filing the appeal bearing HTA No. 1/2024 is condoned and impugned order dated 03.12.2024 passed by the learned Appellate Court is set aside, subject to the Petitioner depositing 75% of Rs. 35,28,558/- with NDMC within three weeks from today and paying a cost of Rs.50,000/- in favour of DHCBA Lawyers Social Security & Welfare Fund, A/C No. 15530100009730 within three weeks from today.



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23. The appeal will be taken up by the learned Appellate Court on 06.03.2025 for consideration on merit. It is made clear that this Court has not expressed any opinion on the merit of the assessment order and/or the consequential demand notice and the Appellate Court will be at liberty to decide the appeal in accordance with law and uninfluenced by this order.

24. Pending application also stands disposed of.

JYOTI SINGH, J

FEBRUARY 11, 2025/shivam