
(2022) 05 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 4692 Of 2019

Abdul Khaliq Rather

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 24-05-2022

Acts Referred:

Registration Of Births And Deaths Act, 1969 — Section 12, 17
Limitation Act, 1963 — Section 5

Citation : (2022) 05 J&K CK 0058

Hon'ble Judges : Ali Mohammad Magrey, J;Puneet Gupta, J

Bench : Division Bench

Advocate : R.A Jan, Taha, Zahoor Jan

Final Decision : Disposed Of

Judgement

Through the medium of this petition, applicant-appellant seeks condonation of delay of 184 days in filing the Letters Patent Appeal against the Judgment and Order of the learned Single Bench dated 18th of September, 2018 for the reasons mentioned hereinbelow:

It is submitted that the Judgment and order, which is sought to be appealed against, was pronounced by the learned Single Bench on 18.09.2018, when the applicant-appellant was busy in attending his ailing brother namely Abdul Rahim Rather.

It is submitted that the ailing brother of the applicant-appellant after prolonged illness died on 14.01.2019. It is submitted that death certificate issued by the Sumbal Municipal Committee under section 12/17 of the Registration of Birth and Death Act, 1969 evidencing the fact is annexed with this application.

It is submitted that due to the aforesaid facts and circumstances, the applicant-appellant could not take the steps required to be taken in law to prefer Letters Patent Appeal against the judgement and order dated 18.09.2018, within the prescribed period of limitation.

It is submitted that the delay occasioned is neither willful nor deliberate in filing the LPA against the Judgment and order dated 18th Sept. 2018.

Learned counsel for the respondent no.5 resisted the application of condonation of delay by submitting that in fact there is a delay of 218 days while as the applicant-appellant has sought condonation of day only for 184 days. It is submitted that if delay of 184 days is condoned as sought still there is delay of 34 days which the applicant-appellant neither has been sought to be condoned nor any explanation for delay has been shown. Be that as it may.

The brother of the applicant-appellant passed away on 14.01.2019 and in that mental condition, due to stress and strain the delay in filing the Letters Patent Appeal occurred. In support of this plea, the learned counsel for the applicant-appellant produced the death certificates in respect of the applicant's brother and submitted that the trauma and mental agony the applicant-appellant would have suffered due to the sudden death of his brother and the delay that occurred on account of such happenings needs to be condoned.

Mr. R.A Jan, learned senior counsel in support of his argument has referred to and relied upon the judgment reported as AIR 1987 Supreme Court

1351 titled "Collector Land Acquisition Anantnag v. Katiji" and also reliance was placed on the following decisions: (a) Mohammed Aslam and others v. C.N.A.Gowdhaman, 2005 (2) CTC 766; (b) Pavayammal and another v. S.N.Chockalingam and others, 2009 (5) CTC 414; and (c) P.Subramanian (dead) and others v. S.Viswasam, 2011-1-LW 53.

Per contra, the learned counsel for the respondent No. 5 reiterating the reasons that found favour for dismissal of the application of the applicant-appellant, submitted that each days delay is to be explained by the applicant-appellant which warrant for condoning the delay. Learned counsel in support has referred to and relied upon the Judgments reported AIR 2011 SC 119; and (2013) 4 AD (SC) 289.

We heard Mr. R.A Jan, learned senior counsel appearing for the applicant-appellant and Mr. Zahoor Jan, learned counsel appearing for the respondent no. 5 and perused the documents and gave our anxious consideration to the issue raised.

The Hon'ble Supreme Court, time and again, held that the power to condone delay by enacting Section 5 of the Limitation Act, 1963 is to enable the courts to do substantial justice to parties by disposing of matters on merits; that the expression sufficient cause employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which serves the ends of justice which is the life purpose for the existence of the institution of courts; substantial justice deserves to be preferred as against technical considerations; and the courts should prefer to deliver justice on merits in preference to the approach which scuttles a decision on merits.

In the light of the above citations, viewing the facts in the instant case, it is clearly seen that the applicant-appellant has given proper, reliable and acceptable details about the date of death of his brother by producing the death certificate.

The death of a family member is a profound, difficult, and painful experience. Grief is a term that refers to the more specific, complex set of cognitive, emotional, and social difficulties that follow the death of a loved one. Individuals vary enormously in the type of grief they experience, its intensity, its duration, and their way of expressing it. Mourning is often defined as either the individual's internal process of adaptation to the loss of a loved one or as the socially prescribed modes of responding to loss, including its external expression in behaviors such as rituals and memorials. Taken together, the grief and mourning processes are understood to be a normal and universal part of the natural healing process that enables individuals, families, and communities to live with the reality of loss while going on with living.

In the case on hand, the death of brother of the applicant-appellant, would have been a painful experience for him and his other family members.

In this factual backdrop, the applicant-appellant has shown sufficient cause for condonation of delay. The Courts are empowered to allow the application for condonation of delay, on sufficient cause being shown or reject such an application in exercise of its judicious discretion. However, such judicious discretion to condone the delay by adopting a liberal approach has to be exercised only in deserving cases, and not in cases where the delay is on account of lethargic attitude and negligence on the part of the applicant. It is not as if each application for condonation of delay has been allowed as a matter of right, no matter whether any sufficient cause for the delay is shown or not. Each case is to be decided on facts and circumstances. The length of delay is no matter. All that matters is the acceptability of explanation. There is no presumption that delay in approaching the Court is always deliberate. Now, even the higher Court of this land have interpreted that the words sufficient cause under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

For the foregoing reasons, we are of the considered view that the delay in filing Letters Patent Appeal is condoned as the sufficient cause has been shown by the applicant-appellant for condoning the delay.

Let the Letters Patent Appeal be listed on 08.07.2022.

Condonation of delay application is Disposed of.