

(2012) 11 CHH CK 0033
In the Chhattisgarh High Court
Case No : Civil Revision No. 193 of 2003

Abdul Rasid Khan

APPELLANT

Vs

State of M.P. (Now State of Chhattisgarh)

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2012) 3 CG.L.R.W. 253

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Prafulla N. Bharat, for the Appellant; G.D. Vaswani, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nawal Kishore Agarwal, J.—The instant revision assails the legality and propriety of the order dated 25-2-2003 passed by the District Judge, Rajnandgaon in Civil Appeal No. 15-A/2002 whereby and whereunder the Court below has condoned the delay in filing the appeal. Facts necessary for disposal of this revision are as under:

(i) The trial Court decreed the plaintiff's suit vide judgment and decree dated 11-5-2000. The Officers of the respondent-State applied for certified copy of the above judgment and decree on 1-7-2000, which was received by them on 3-8-2000 and thereafter on 7-8-2000, the appeal was filed. An application u/s 5 of the Limitation Act for condonation of delay in filing the appeal was also filed.

(ii) The grounds taken in the application for condonation of delay were that the respondent's advocate has not intimated about the passing of judgment and decree by the trial Court. From 13-5-2000 upto 18-6-2000 there was summer vacation. In the month of April-May, the concerned Divisional Forest Officer (D.F.O.) was busy in collection of forest produce and when the D.F.O. on 30-6-2000 contacted Government Advocate, then he came to know that an ex

parte decree has been passed by the trial Court. Thereafter, on 1-7-2000, they applied for certified copy of the judgment and decree, which was received by them on 3-8-2000 and immediately thereafter, the appeal was filed.

(iii) The application was contested by the applicant. The trial Court, vide order impugned condoned the delay in filing the appeal. Hence, this revision.

2. Shri Prafulla N. Bharat, learned counsel appearing for the applicant, vehemently argued that the respondent utterly failed to assign sufficient cause for not preferring the appeal in time. The application for condonation of delay in filing the appeal filed by the respondent is as vague as it could be and, on the face, shows gross negligence on the part of the respondent, inasmuch as, even the date of passing of the judgment and decree has been wrongly mentioned. By placing reliance of the judgment of Supreme Court in the case of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, , he would further submit: the expression "sufficient cause" cannot be construed too liberally, merely because the party is the Government. According to him, the Court below had acted without jurisdiction in condoning the delay in filing the appeal.

3. Per contra, Shri G.D. Vaswani, learned Government Advocate for the respondent/State, would submit: the expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented process approach rather than technical detention of sufficient cause for explaining every day's delay. It was further contended, the delay is very short, and therefore, the Court below has not committed any jurisdictional error in condoning the delay in filing the appeal.

4. I have heard learned counsel for the parties and perused the paper book.

5. In the instant case, judgment and decree was passed on the 11-5-2000 whereas the appeal was preferred on 7-8-2000. As per the application, the Divisional Forest Officer was busy in the month of April-May in collection of forest produce in the Naxalite affected area and he enquired about the case from the Government Advocate on 30-6-2000 and then only he came to know about the passing of the decree. Immediately on 1-7-2000 he applied for certified, copy, which was received by the respondent on 3-8-2000 and on 7-8-2000 the appeal was filed.

6. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the Statute itself makes any distinction. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files

from table to table and keeping it on table for considerable time causing delay-intentional or otherwise-is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of altitude is not impermissible. If the appeals are brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient cause for explaining every day's delay (please see State of Bihar and Others Vs. Kameshwar Prasad Singh and Another,

7. Further, once the Court accepts the explanation as sufficient, it is the result of the positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

8. In view of above-mentioned settled position of law, I do not find any jurisdictional illegality, perversity or absurdity in the approach of the Court below in condoning the delay in filing the appeal warranting interference by this Court under its revisional jurisdiction. In the result, the revision fails and is accordingly dismissed.