
(2015) 10 AHC CK 0023
In the Allahabad High Court
Case No : Writ-B No. 53748 of 2015

Abdul Wadood

APPELLANT

Vs

The Upper Ziladhikari (Bhu Rajswa) and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21
Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 41, 53B, 9
Uttar Pradesh Land Revenue Act, 1901 — Section 201

Citation : (2016) 114 ALR 724 : (2015) 129 RD 761

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : S.C. Tripathi, for the Appellant; M.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Suresh Chandra Tripathi, for the petitioner and Sri M.A. Khan, for respondent-2.

2. This writ petition has been filed against the order of Deputy Director of Consolidation dated 31.08.2015, condoning delay in filing restoration application and fixing a date for hearing of restoration application, in proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act").

3. Abdul Qayum (respondent-2) filed an application dated 30.01.2006, for recalling order dated 22.01.1999, passed by Deputy Director of Consolidation in Reference No. 732 State v. Abdul Mazid, along with a delay condonation application. It has been stated in the restoration application that plot No. 1041/3 (area 0.06 acre) was his original holding. The petitioner did not file any objection under Section 9 of the Act, for determination of valuation of plot 1041/3 nor filed any objection at the time of chak allotment. However, after finalization of consolidation scheme, he got it valued and reserved for "shahid bara" by order dated 22.01.1999, through reference, without any notice to Abdul Mazid. He

came to know about the order dated 22.01.1999, from consolidation Lekhpal yesterday. In delay condonation application, it has been stated that order was passed without any notice to him. On coming to know about the order, he immediately filed restoration application as such delay in filing the restoration application was liable to be condoned under Section 5 of Limitation Act.

4. The petitioner filed an objection, in delay condonation application, in which he had stated that respondent-2 had knowledge of the order dated 22.01.1999 from very beginning. He has not explained day to day delay as such delay was not liable to be condoned. Delay condonation application was filed on 30.01.2006 but affidavit in support of delay condonation application was filed on 03.02.2006 and without filing any application for taking the affidavit on record, it was attached in the record as such no reliance can be placed upon this affidavit. Respondent-2 has stated that he got information of the order from office of Consolidation Officer but has not given any evidence to prove that for what purpose he had gone to office of Consolidation Officer. In the objection to restoration application, the petitioner has stated that notice of reference was served upon Abdul Mazid by pasting of notice on his door.

5. The petitioner filed a writ petition (registered as Writ-B No. 10944 of 2010) for mandamus, directing the Deputy Director of Consolidation to decide delay condonation application before deciding restoration application. The writ petition was allowed on 18.05.2012 and Deputy Director of Consolidation was directed to decide delay condonation application in accordance with law. Then, the petitioner filed another writ petition (registered as Writ-B No. 59956 of 2013) for mandamus directing Deputy Director of Consolidation to decide objection of the petitioner in delay condonation application. Thereafter, the petitioner filed third writ petition (registered as Writ-B No. 8955 of 2015) for mandamus directing the respondents authorities to ensure compliance of the order dated 09.01.2009 passed by Deputy Director of Consolidation. The writ petition was disposed of by order dated 13.02.2015, directing Deputy Director of Consolidation to ensure compliance of the order dated 09.01.2009 and also to dispose of restoration application within a period of three months.

6. Thereafter, Deputy Director of Consolidation, heard delay condonation application and by order dated 31.08.2015, condoned delay in filing restoration application on the cost of Rs. 500/- and fixed 15.09.2015 for hearing of restoration application on merits. Hence, this fourth writ petition has been filed.

7. The counsel for the petitioner submitted that Reference No. 732 was titled as Abdul Wadood v. State. However, in restoration application and delay condonation application, respondent-2 titled as Reference No. 732 State v. Abdul Mazid. Respondent-2 realized this mistake and moved an application for amendment of title of restoration application on 26.03.2010 but he got this application dismissed as not pressed on 14.03.2013. At present restoration application and delay condonation application are in Reference No. 732 State v. Abdul Mazid, decided on 22.01.1999 although there is no such case. Thus entire

exercise of Deputy Director of Consolidation for condonation of delay is worthless as neither restoration nor delay condonation applications are filed in correct case. By virtue of Section 41 of the Act, provisions of Chapter IX and X of U.P. Land Revenue Act, 1901 have been applied. Section 201 is falling under Chapter IX of U.P. Land Revenue Act, 1901, provides for rehearing on proof of good cause for non-appearance. Similarly by virtue of Section 53B of the Act, provisions of Section 5 of Limitation Act, 1963 have been applied. For condoning delay the court is required to record findings relating to sufficiency of cause of delay. Deputy Director of Consolidation has neither referred the cause of delay as explained by respondent-2 nor considered the objection of the petitioner in delay condonation application. He had not recorded any finding relating to sufficiency of cause for condonation of delay although there was inordinate delay of about 7 years. He relied upon the judgments of this Court in *Kunwar Sen Vs. Emperor*, , in which it has been held that if the appeal is barred by time then it would have to be dismissed unless time were extended. The application for condonation of delay must be considered in the first instance. *Sher Singh v. Joint Director of Consolidation*, 1969 ALJ 38 (DB), in which it has been held that if the law requires a Court to give its own findings on a question of fact and that question is of such a nature that it vitally affects the ultimate decision of the dispute before it, the court acts in the exercise of its jurisdiction with substantial irregularity in omitting to give its finding on that question. *Ibrahim v. DDC and others*, AIR 1973 RD 378 , in which it has been held that apart from sufficient cause, the party must show that he has been reasonably diligent in prosecuting his application and that he has acted in a bona fide manner. *State of U.P. and Others Vs. Bhabul Singh and Others*, in which it has been held that if there is no sufficient and good ground, delay cannot be condoned. *Rama Shankar v. DDC and others*, 1999 (90) RD 629, in which it has been held that if an affidavit was kept on record without any order being passed in this respect, then it is an illegality. *Sukkh v. DDC and others*, 2003 (95) RD 49 , it which it has been held that approach of the court cannot be casual in deciding delay condonation application. *Kishore Kumar Trivedi Vs. Kiran*, , it which it has been held that unless delay is condoned, there would be no valid application. *Doodh Nath and Others Vs. Deputy Director of Consolidation and Another*, , it which it has been held that without mentioning reasons, delay of 16 years was not liable to be condoned. Judgments of Supreme Court in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , it which it has been held that proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction for condonation of delay. *Damodaran Pillai and Others Vs. South Indian Bank Ltd.*, , it which it has been held that delay cannot be condoned only for the reason of hardship.

8. I have considered the arguments of the counsel for the parties and examined the record. Section 5 of Limitation Act, 1963 is quoted below:--

"5. Extension of prescribed period in certain cases.--Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if

the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

9. Supreme Court in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, and *B. Madhuri Goud Vs. B. Damodar Reddy*, , made a departure from the earlier judgments in which strict interpretation was placed on the expression "sufficient cause" and held that the legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

"(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

10. Supreme Court again in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others*, , laid down following principles:--

"(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach

while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts

are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

11. Supreme Court in *Basawaraj and Others Vs. The Spl. Land Acquisition Officer, ,* held that "sufficient cause" is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bonafide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

12. Section 201 of U.P. Land Revenue Act, 1901 provides that if a defendant within fifteen days after such order has been communicated to him shows good cause for his non-appearance and satisfies the officer making the order that there has been a failure of justice, such officer may revive the case. In the present case, respondent-2 has stated that order dated 22.01.1999 was passed without giving notice to his father and was an ex parte order. The petitioner, in his objection, has stated that notice was served by pasting it on the door of Abdul Mazid. Thus there was no personal service of notice of reference upon Abdul Mazid. The only objection of the petitioner was that respondent-5 had knowledge of the order from very beginning. But he could not adduce any evidence to prove this allegation. If the notice was not served and an ex parte order was passed then in view of Section 201 of U.P. Land Revenue Act, 1901, the order was liable to be recalled. The application for recall of the order is required to be filed within fifteen days of communication of the order. The petitioner failed to prove that order dated 22.01.1999 was ever communicated to Abdul Mazid or respondent-2. Restoration application cannot be said to time

barred. In any case, if the order was passed without any notice to a defendant then it was a sufficient cause for condonation of delay. Deputy Director of Consolidation has not committed any illegality in condoning delay in filing restoration application.

13. Non-service of notice of reference before passing the order dated 22.01.1999 was a common ground for condonation of delay and allowing restoration application. However, the petitioner obtained a mandamus from this Court to decide delay condonation application first. In such circumstances although respondent-1 was satisfied from sufficiency of cause for condonation of delay but prevented to record any findings in this respect as it may cause prejudice to the petitioner in hearing restoration application on merit. The petitioner himself created unusual situation now he cannot blame respondent-1.

14. In delay condonation matter, discretion vests with the original Court. In *Shanti Prasad Gupta v. DDC and others*, 1981 Supplement SCC 73, Supreme Court held that once discretion has been exercised in condonation delay then higher Court should not interfere with discretion of original Court. In this case there was sufficient cause for condonation of delay as there was no personal service of notice before passing the order and respondent-1, being satisfied condoned the delay, then it is not proper for this Court to interfere with discretion of the Court below.

15. So far as other objection of the petitioner that restoration application and delay condonation application are in Reference No. 732 State v. Abdul Mazid decided on 22.01.1999 although there is no such case, is concerned, the counsel for respondent-2 submitted that title of restoration and delay condonation application are correct. The petitioner in his objection has given incorrect title as such the counsel for respondent-2 was misguided and filed an amendment application. Later on when correct facts were verified then the application was got dismissed as withdrawn. The petitioner has filed copy of the reference as approved by order dated 22.01.1999 along with amendment chart as Annexure-6 to the writ petition. In amendment chart chak of Abdul Wadood or his father Sattar was not affected. Plot 1041/3 (area 0.06 acre) was taken away from chak of Abdul Mazid and allotted to "shahid bara". There is nothing to show that any land of "shahid bara" or of the petitioner was taken away in lieu of this allotment rather bachat land and nali has been deleted to allot its land to affected persons. Thus prima facie the contention of the counsel for respondent-2 appears to be correct. In case Abdul Wadood was not at all affected by Reference No. 732, then there was no question for giving title of reference as Abdul Wadood v. State. In any case, this objection was not raised by the petitioner before Deputy Director of Consolidation as such he cannot be permitted to raise this factual controversy for the first time in writ petition. Similarly the objection that the affidavit filed on 03.02.2006 was taken on record without any order of the Court has also no substance. In case, the affidavit was filed and it was taken on record, then there is no fault of respondent-2. The petitioner himself has filed counter affidavit. The

restoration application is still pending, the petitioner may raise these grounds there. The conduct of the petitioner shows that by misleading the Court, the petitioner some how or other wants to get further proceeding of restoration application stayed, which is pending since 30.01.2006.

16. Before arguments in restoration application, the petitioner has filed this fourth writ petition and thus he is abusing process of the Court and making all effort to withheld hearing of restoration application on merit, which is pending since 2006. It is extreme harassment of respondent-2 in an illegal manner.

17. In view of the aforesaid discussion, the writ petition has no merit and is dismissed with costs of Rs. 20,000/-. The petitioner shall pay this cost to respondent-2 within a period of one month and file a receipt before Deputy Director of Consolidation. In case, respondent-2 avoids to accept the costs, then a bank draft of Rs. 20000/- in the name of respondent-2 payable at district Jaunpur shall be deposited in the restoration application before respondent-1. If respondent-1 fails to deposit aforesaid costs within one month, his defence in restoration application shall be struck off. On the application made by respondent-2 for realization of the costs, Registrar General shall issue recovery certificate, which shall be realized by the Collector Jaunpur.