

(2019) 09 GAU CK 0018

In the Gauhati High Court

Case No : Interlocutory Application (Civil) No. 460 Of 2017, Civil Revision
Petition No. 290391 Of 2017

Allahabad Bank And Ors

APPELLANT

Vs

Hiranya Bora And Ors

RESPONDENT

Date of Decision : 09-09-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Code Of Civil Procedure, 1908 — Order 43 Rule 2, 43 Rule 3(A)

Citation : (2019) 09 GAU CK 0018

Hon'ble Judges : Mir Alfaz Ali, J

Bench : Single Bench

Advocate : S Chanda, R Deka

Final Decision : Dismissed

Judgement

1. This interlocutory application u/s 5 of the Limitation Act has been filed by the applicant under Order 43 Rule 3 A read with Rule 2 of Chapter 5A of the Gauhati High Court Rules, praying for condoning the delay in preferring the civil revision against the order dated 29-04-2014 passed by the learned Civil Judge in Title Execution Case No. 8/2002.

2. The petitioner, a nationalized bank, filed a suit (T.S.21/1993) for recovery of an amount of Rs.8,24,298/-, which was decreed by the judgment and decree dated 14-08-1996 and the execution proceeding was initiated. The respondent No. 6 herein, filed an application before the learned executing court raising objection that the property which was sought to be sold for realizing the loan, was the property of the respondent No. 6 and therefore, her property could not be sold for recovery of the loan amount. The learned Civil Judge after hearing the parties, held, that the objection raised by the respondent No. 6 had merit. Accordingly, the petition was allowed by order dated 29-04-2014. The said order dated 29-04-2014 has been challenged by filing the revision petition on 31-01-2017. There was a delay of 917 days in preferring the revision petition,

and as such, the petitioner has filed the instant petition for condonation of delay. Although the application has been filed under a wrong provision of the Code of Civil Procedure, there is no difficulty in disposing the application on merit having regard to the relevant provision of law for condonation of delay, in filing a revision.

3. The delay of 917 days is sought to be explained by stating that the impugned order was passed on 29-04-2014 by the Civil Judge, Jorhat, but the concerned advocate of the petitioner informed the senior manager of the bank at Dehehorgorah about the order belatedly. Having come to know about the order, the branch manager sent the necessary documents to the penal lawyer of the bank at Guwahati on 10-07-2014. The learned lawyer at Guwahati did not handle the matter and therefore, it remained unattended. In the meantime, another officer joined the bank, who was also unaware of the subject, and accordingly, the matter remained unattended till September, 2016. On 05-09-2016 upon receiving a letter from the respondent No. 6, the then manager consulted the lawyer at the zonal office. He also collected the necessary papers and documents and furnish the same to the lawyer on 21-09-2016. The said lawyer asked for some more documents, which were furnished to him on 05-12-2016 and eventually the revision petition was filed on 31-01-2017. The respondent filed a written objection stating that the petitioner has not been able to show any sufficient cause for condoning the inordinate delay of 917 days, as the averments made in the application were vague. Faced with the objection filed by the respondents, the applicant filed an additional affidavit, wherein the applicant stated the name of the concerned advocate at Guwahati to whom the documents of the case were sent for filing the revision petition on 10-04-2014. It is also stated in the said additional affidavit that the manager of the bank, Kishaloy Bhattacharjee, who was In-charge of the concerned branch from 10-04-2014 to 29-08-2015 already died and therefore, the bank could not get any information as to why the matter remained unattended. It is also stated that one Omprakash Srivastava was the manager of the concerned branch during the period from 31-8-2015 to 2-7-16 and from 5-7-16 one Abay Kumar was the In-charge of the bank. It is also stated that the present manager came to know about the matter only after receiving the notice from the respondent No. 6.

4. Learned counsel for the petitioner Mr. Chamaria submits, that the delay was caused in the process of taking decisions, inasmuch as, unlike an individual, the State or its instrumentalists like the petitioner bank cannot take decision promptly because of its very nature of impersonal machinery and the required procedure to be followed. Therefore, considering the peculiar facts of the case, delay should be condoned by taking a liberal view, so that the matter may be decided on merit, as the subject matter involves huge public money, submits Mr. Chamaria. To buttress his submission, Mr. Chamaria placed reliance on a decision of this Court in Cholamandalam MS General Insurance Company Limited Vs. Kalpana Kumari Deka and Ors., MANU/GH/0102/2017. Learned senior counsel Mr. B. D. Das for the respondents contends, that the application is totally vague

and no reasonable cause, not to speak of sufficient cause, has been shown, so as to entitle the petitioner for condonation of an inordinate delay of 917 days. Mr. Das further submits that the petitioner was totally negligent in not filing the petition in time, and as such, the delay does not deserve to be condoned. In support of his submission, Mr. Das placed reliance on the following decisions :

1. 2017 (1) GLT 219, Union of India & Anr. Vs. Poly Product (M/S) & Anr.
2. 2016 (5) GLT 124, Union of India and Ors. -Vs.- Hussain Ahmed.
3. AIR 2012 (SC) 1506, Chief Post Master General Vs. Living Media India Ltd.
4. (2013) 4 SCC 52, Amalendu Kumar Bera & Ors. v. State of West Bengal.
5. 2012 (5) SCC 157, Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai.
6. (2019) 4 SCC 612, Estate Officer, Haryana Urban Development Authority and Anr. Vs. Gopichand Atreja.

5. In Chola mandalam MS General Insurance Company Limited Vs. Kalpana Kumari Deka and Ors. (supra), this Court having considered various authorities, condoned the delay of 92 days, having found that the authorities of the applicant in the said case were taking all necessary steps with promptitude and there was no deliberate inaction or negligence on the part of the applicant. While condoning 92 days delay, the court held as under :

"19. In the present case, it is also seen that the various authorities of the applicant had moved with the required promptitude and therefore, the delay cannot be said to be either deliberate or vitiated by negligence on the part of the applicant to take steps with promptitude as desired. Therefore, the ratio of the cases cited by the learned counsel for the respondent Nos. 1 to 4 is not found to be in pari materia with the facts of the present case at hand. Therefore, in the opinion of this Court, the causes shown by the applicant is accepted as a good and sufficient cause for condoning the delay.

Accordingly, the delay of 92 days beyond the period of limitation is hereby condoned."

6. In Union of India Vs. Poly Products (M/S) and Anr. (supra) this Court observed that "moving of files from one department to another cannot be a ground for preferring the appeal after such an inordinate delay, it cannot be evinced that the matter was pursued diligently by the authority and refused to condone the delay of 382 days. having found lack of diligence on the part of the appellant."

7. In 2016 (5) GLT 124, Union of India and Ors. -Vs.- Hussain Ahmed, where the petitioner being the state sought for condonation of delay of 232 days on the ground, that the delay was caused in obtaining the opinion from the counsel and the other authorities, who took time for examining the matter and giving approval for filing the appeal. The Division Bench refused to condone the delay of

232 days on the ground that there was lack of diligence in pursuing the matter and taking appropriate steps by the concerned authorities.

8. In *Chief Post Master General and Ors. Vs. Living India Media Ltd and Anr.* (supra), the Apex Court strongly deprecated the lackadaisical attitude of the officials and refused to condone the delay of 427 days on the ground of procedural red tape and movement of file, the Apex Court held as under :

"28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

9. In *Amalendu Kumar Bera and ors. Vs. State of West of Bengal and Ors.* (supra), the Apex Court observed that merely because the respondent is a state, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of sufficient cause, delay shall not be condoned. The Apex Court also observed that though court should always take liberal approach in the matter of condonation of delay particularly in case when the appellant is State, but in a case where there are serious laches and negligence on the part of the state in challenging the decree, the delay does not deserve to be condoned mechanically in absence of sufficient cause.

10. In *Moni Ben Devraj Jha Vs. Municipal Corporation of Brihan Mumbai* (supra), the Apex Court observed that court can take note of the fact, that in cases involving the State or its agencies/instrumentalists, sufficient time is taken in the decision making process, but no premium can be given for total lethargy or utter

negligence on the part of the officer of the state and/or its agencies/instrumentalists and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the appeal would cause injuries to public interest.

11. In *Estate Officer, Haryana Urban Development and Anr. Vs. Gopichand* (2019) 4 SCC 612, where the appellant was a statutory body being Haryana Urban Development Authority, the Apex Court declined to condone the delay with the observation that "delay should not be condoned when the Officer-In-charge of the affairs failed to discharge duty promptly and with due diligence, despite there being facilities and infrastructure. The Apex Court further observed that in such circumstances, where the officer-in-charge of the case should be made answerable for the lapse on their part to make the good loss suffered by the appellant-authority.

12. Thus the view consistently taken by the Apex Court is that when there is negligence, lack of inaction and lack of due diligence, the court should not condone the delay, in absence of 'sufficient cause', be it individual or a state. It is no doubt true, that the court should take a liberal approach in the matter of condonation of delay and some amount of latitude is also permissible in case of state or its agencies/instrumentalities being the impersonal machinery, which consume some time in the decision making process by the authorities, but the delay does not deserves to be condoned, when it is caused due to negligence or inaction of the authorities. Only because the party seeking condonation is a state and an impersonal machinery, it is not absolved from showing sufficient cause for delay. What is most important to note is that the explanation or the cause shown for the delay must be reasonable and not a lame excuse. Therefore, when negligence, lack of due diligence or lack of bona fide are attributable to the parties seeking condonation, he/it is not entitled to the indulgence of the court for condonation of delay. Because, while taking liberal view to condone the delay, court cannot be totally unmindful of the fact, that valuable right accrues to the other party, because of not filing appeal or revision within the statutory time, which cannot be taken away in a light manner for the simple reason that "law shelters each and every one under the same umbrella".

13. In *Isha Bhattacharjee Vs. Mg.Committee of Raghunathpur Nafar*(supra), the Apex Court observed that when a delay is for a short period of time, it can be construed liberally. But when the delay is inordinate and for a long time, court should strictly consider the same as it involves the doctrine of prejudice. Therefore, even the state or its instrumentalists being an impersonal machinery deserves some amount of latitude and liberal approach, when negligence or lack of inaction or lack of due diligence is attributable to the cause of delay, such delay cannot be condoned, whether the applicant is a state or a private individual, in absence of sufficient cause.

14. Keeping in view the above principle, I may now proceed to consider whether the petitioner has been able to show sufficient cause in the present case. The

impugned order sought to be revised was passed on 29-04-2014. However, the concerned counsel informed the authority about the order belatedly and therefore, the relevant papers were sent to the penal advocate at Guwahati on 10-07-2014. Though the order was passed on 29-04-2014, which was an inter-party order and the concerned counsel at Guwahati was allegedly contacted on 10-07-2014, there is no mention in the petition or the affidavit as to when the concerned advocate informed the bank officials and how much time he consumed for sending the document to the counsel at Guwahati. Surprisingly enough after sending the documents to the counsel at Guwahati, the bank officials remained sitting over the matter for more than two years and did not take any step till 05-09-2016. Only when the respondent No. 6 issued notice asking the bank to vacate the rented premise staking claim over the rented property on the basis of the order dated 29-04-2014, the bank officials wake up from sleep. What is apparent from the petition is that no explanation is advanced for this two years of delay except stating that the matter remained unattended. Even after being alerted by the respondent No. 6 on 05-09-2016, the bank official sent the necessary documents to the counsel on 21-09-2016 for filing the revision. The advocate at Guwahati asked for further documents, which were sent on 05-12-2016, i.e., almost after three months. Nothing has been mentioned in the petition as to when the advocate at Guwahati asked for further documents and how much time was taken by the then manager for sending those documents. Though by filing an additional affidavit, the petitioner sought to fill up some gaping hole, stating that Kishaloy Bhattacharyya was the branch head of the bank from the period of 29-04-2014 to 29-08-2014, who died on 13-06-2016 after his retirement, and therefore, the authority could not ascertain as to what step was taken during the period from 29-04-2014 to 29-08-2014. Such an explanation from the authority is hardly acceptable. The officer might have been transferred or retired but the records were definitely in the office. Why the petitioner could not ascertain from record or concerned file, whether any step was taken or not. It is also stated in the additional affidavit that after the said Kishaloy Bhattacharyya, one Omprakash Srivastava took charge, who was in-charge of the said branch from 13-08-2015 to 02-07-2016. But admittedly no step was taken by the said officer during his tenure of one year and the matter remained totally unattended. The next manager though joined on 05-07-2016, he also did not take any steps till a notice was issued by the respondent No. 6 asking the bank to vacate the premises on the basis of the impugned order. What is therefore writ at large in the petition and affidavit is that after 07-10-14 till 21-09-16, no one bothered to take any step for filing the revision and admittedly the matter remained unattended, which clearly demonstrates utter negligence, inaction and lack of due diligence on the part of the officials of the petitioner. When the matter remained unattended for 2½ years for no reason and nobody bothered to take any step or to enquire as to what had happened to the documents sent to the learned advocate at Guwahati as back as on 10-07-14, for filing the revision petition, no amount of liberal consideration can persuade the court to hold that the petitioner was prevented by sufficient cause from filing

the revision in time, so as to condone the inordinate delay of 917 days. This being the position, this petition for condonation of delay does not deserve to be allowed for want of "sufficient cause". Accordingly, the petition is dismissed.