
(2015) 02 GAU CK 0094
In the Gauhati High Court
Case No : C. Rev Pet. No. 47 of 2010

Baba Sri Ramdeo Mandir Trust and Others	APPELLANT
Vs	
Rabindra Prasad Shah and Others	RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 5 GLT 1

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : K. Agarwal, Sr. Advocate, N. Deka, P. Neog and G.J. Saikia,
Advocates, for the Appellant

Judgement

Hrishikesh Roy, J.—Heard Mr. K. Agarwal, the learned senior counsel appearing for the petitioners. The respondents are unrepresented but from this Court's order dated 25.8.2010 and the order dated 28.4.2010 of the Lawazima Court it can be gathered that notices were refused by both respondents. Therefore the two respondents are non-participant by their own choice. The petitioner No. 1 is a religious and charitable Trust and the remaining 3 petitioners are the trustees. The Trust was created to look after and manage the temple in the name of Baba Sri Ramdeo Mandir on land donated by one Mohanlal Choudhury. At the temple entrance gate, the trustees permitted two persons to establish small gumtis (pan shops) measuring 10 ft. x 12 ft. and one of the gumtis after changing hand from the predecessors-in-interest, is currently claimed by the respondents.

2. When the footfalls of the temple devotees increased and the Trust required the space occupied by the pan shops at the entrance of the Temple, on being requested, one original allottee Bhikhari Bhagat vacated his gumti on 4.4.2001 but the respondent No. 1 Rabindra Prasad Shah refused to vacate his space. It appears that the respondent No. 1 without the knowledge of the trustees", has inducted the respondent No. 2 on his gumti.

3. The two respondents on 26.4.2001 filed the TS. No. 25/2001 (later

renumbered as T.S. No. 52/2005) against the 4 trustees in their individual capacity, for a decree of permanent injunction from disturbing the possession of the plaintiffs. The defendants in their W.S. objected to non-joinder of the trust. Furthermore, a counter claim was made for recovery of khas possession by removing the gumti.

4. The learned Trial Court through the order dated 27.8.2002 directed that counter claim of the defendants be segregated, for an independent suit and accordingly the petitioners filed the T.S. No. 97/2002 (now renumbered as T.S. No. 51/2005) against the respondents, praying for a decree for recovery of khas possession, by removal of the gumti, operated by the respondents.

5. The learned Civil Judge (Jr. Division) No. 2, Dibrugarh on 12.7.2006 (Annexure-IV) decreed the respondents' T.S. No. 52/2005 by holding that the plaintiffs had right, title, interest and possession of the suit property and consequently the defendant trustees were permanently restrained, from disturbing the possession of the respondents.

6. In the trustees own case i.e. T.S. No. 51/2005, the respondents/defendants on 12.2.2007 applied for amendment of their W.S. to additionally plea res judicata since their own T.S. No. 52/2005 was decreed on 12.7.2006, by granting permanent injunction. Certain amendments were also sought by the petitioners/ plaintiffs in the trustees case for accepting the copy of the original Trust Deed, the certified copy of which is exhibited as Exhbt. 1. However the learned Trial Court on 2.4.2007 (Annexure-VII), allowed the amendment of the W.S. but rejected the plaintiffs' application. This order was challenged by the aggrieved petitioners (plaintiffs) in the CRP No. 168/2007 and this Court on 16.5.2007 stayed the Trial Court's order dated 2.4.2007.

7. For want of advice from their lawyers, the petitioners did not initially challenge the decree granted to the respondents on 12.7.2006 in the T.S. No. 52/2005. But when the lawyers at Guwahati learnt of the decree at the stage of preparing the CRP No. 168/2007, the trustees were advised to prefer Appeal against the judgment and decree dated 12.7.2006 in the T.S. No. 25/2001, filed by the respondents. This step was considered necessary by the lawyers, as the respondents raised the plea of res judicata in the trustees T.S. No. 51/2005, through the amendment of their W.S.

8. Based on the advice of their lawyers, with a delay of 380 days, the trustees filed the T.A. No. 29/2007 with an application under Section 5 of the Limitation Act. This delay condonation application was numbered as petition No. 1488/07. But the learned Civil Judge, Dibrugarh through the impugned order dated 7.11.2009 (Annexure-IX) rejected the condonation application on the ground the applicants failed to satisfactorily explain the delay, in preferring the Title Appeal. Therefore this Revision Petition is filed by the aggrieved trustees to challenge the Appellate Court's order dated 7.11.2009.

9. Mr. K. Agarwal, the learned senior counsel submits that the trustees were

under bona fide belief of securing ejectment of the respondents through their independent T.S. No. 51/2005 and they were never advised by their Advocates at Dibrugarh, to challenge the decree dated 12.7.2006, secured by the respondents in their T.S. No. 51/2005. But when legal advice was received from the High Court lawyers at the stage of filing the CRP No. 168/2007, the T.A. No. 29/2007 was immediately filed with an application under Section 5 of the Limitation Act, praying for condonation of delay of 380 days. Projecting that the delay is not occasioned deliberately or on account of culpable negligence, the senior counsel argues for consideration of the Appeal on merit, by acceptance of the delay condonation application.

10. The petitioners further contend that the T.S. No. 51/2005, filed by the trustees for ejectment of the respondents was decreed but the Appeal filed by the respondents is now pending before the Appellate Court. Therefore the learned counsel submits that the ejection of the respondents is still a live issue that is under consideration of the Appellate Court and therefore if the petitioners' Appeal is accepted by condoning the delay, prejudice would not be caused to the respondents, as both contesting parties then can have a final decision of the Appellate Court on merit, on their respective claims.

11. In the absence of any representative from the respondents' side, I have examined the ratio in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, . In this case, the Apex Court held that the expression "sufficient cause" in Section 5 of the Limitation Act must receive liberal construction so as to advance substantial justice and unless gross negligence or deliberate inaction or lack of bona fide is perceived against the party applying for condonation, the delay in preferring the Appeal should generally be condoned.

12. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the object behind the conferment of condonation power was examined by the Apex Court and it was observed that the Court has to invoke this power to provide substantial justice to the parties for disposal of cases on merits. In the context of liberal approach preached by the Court, the following observations were made in this case:

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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.

....."

13. In the present case, the learned Appellate Court refused to condone the delay in preferring the Appeal on the ground that the cause of delay is not satisfactorily explained. But in the petition No. 1488/07, the applicants have given specific reasons i.e. their bona fide belief of securing ejectment through their own T.S. No. 51/2005 and the initial absence of legal advice to file appeal against the judgment and decree dated 12.7.2006, secured by the respondents in their T.S. No. 25/2001. The explanation shows that the applicants were sincerely trying to secure the ejectment of the respondents through their independent T.S. No. 51/2005 and only when plea of res judicata was raised by the respondents in the trustees' Title Suit, legal advice was given to challenge the decree secured by the respondents in their T.S. No. 25/2001. When the trustees are seriously litigating on their claim by filing an independent suit, it is apparent that if proper legal advice was given to them, they would have certainly filed the Appeal in due time, as they do not stand to gain anything by filing a belated Appeal.

14. Moreover, when the petitioners' T.S. No. 51/2005 is already decreed and the matter is taken in Appeal by the aggrieved respondents (defendants in T.S. No. 51/2005), the Appellate Court in any case is examining the merit of the respective claim of the parties.

15. In the above backdrop and considering that a rational and pragmatic approach is suggested by the Apex Court in G. Ramegowda (Supra) and Mst. Katiji (Supra), I am of the view that the T.A. No. 29/2007 should be accepted by condoning the delay and be decided on merit in accordance with law. It is ordered accordingly. With the above observation the impugned order dated 7.11.2009 (Annexure-IX), passed by the learned Civil Judge, Dibrugarh is quashed and the case stands allowed without any order on cost. For expediting the matter, the petitioners should appear before the Court on 16.3.2015. The Registry should forward a copy of this order to the learned Civil Judge, Dibrugarh.