
(1982) 04 CAL CK 0023
In the Calcutta High Court
Case No : Civil Revision No. 2316 of 1978

Chiranjib Prosad Roy

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 96
Limitation Act, 1963 — Section 5

Citation : AIR 1983 Cal 21

Hon'ble Judges : S.N. Sanyal, J

Bench : Single Bench

Advocate : K.K. Moitra and S.S. Roy, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Sanyal, J.—This is an application u/s 115 of the C. P. C. and it is directed against the order of the learned District Judge, Jalpaiguri dated June 7, 1978 condoning the delay and admitting the appeal preferred by the opposite party against the judgment and decree in Money Suit No. 19 of 1974 of the learned Munsif, Alipurduar. The petitioner obtained the said decree against the opposite party on Sept. 29, 1977. The decree was drawn up on Oct. 8, 1977. The opposite party filed the appeal being Money Appeal No. 2 of 1978 before the learned District Judge on Jan. 24, 1978. The opposite party also filed an application u/s 5 of the Limitation Act for condonation of the delay. The grounds alleged by the opposite party were that certified copies of the judgment and decree were received in the Head Office of the opposite party on Dec. 21, 1977. These papers could not however be put up immediately before the Competent Authority for decision regarding filing of the appeal as they were misfiled with the records of a different suit. After strenuous search the said copies were traced out on Jan. 16, 1978. The decision for filing the appeal was finally made by the Competent Authority on Jan. 21, 1978 and the appeal was presented on Jan. 24, 1978. The petitioner objected to the said prayer of the opposite party for condonation of

delay. After hearing the parties, the learned Judge by the impugned order condoned the delay and admitted the appeal. The learned Judge was of opinion that the Railway was a big establishment and it had to defend too many suits filed by different parties and it was quite probable that the copies of the judgment and decree were misfiled with the file of a different case in the Head Office of a Railway. The petitioner has challenged the said decision of the learned Judge in the present Rule.

2. The learned Advocate for the petitioner has argued that the learned Judge acted illegally and with material irregularity in condoning the delay and admitting the appeal. It has been contended that the learned Judge did not come to any definite finding and he had no jurisdiction to condone the delay on the ground of probability. The submission of the learned Advocate for the petitioner is that the learned Judge failed to consider that a Railway establishment or Government could not claim any privileged position and they were in no better position than an ordinary litigant. The petitioner has been deprived of a valuable right which accrued to him by lapse of time and the petitioner should not be deprived of the same unless the opposite party succeeds in establishing that there was sufficient cause for the delay in preferring the appeal. The learned Advocate for the petitioner has referred to the case of Inder Singh Des Raj and Others Vs. Harnam Singh Gian Singh, and has argued that the Court has no power to en-tend time as a matter of indulgence. He has also referred to the case of Durga Dass and Others Vs. Baru Ram and Others, and has contended that in the case of arbitrary and injudicious exercise of discretion, the Appellate Court can interfere. The learned Advocate has also referred to the case of Nrisingha Charan Nandy Choudhury Vs. Trigunand Jha Khaware and Others, and has argued that it is the duty of the High Court to carefully disentangle the findings of fact from the inferences which may be drawn from these facts and to review the legal conclusions if erroneous.

3. The learned Advocate for the petitioner has also referred to the decisions reported in Ibrahim Vs. The Deputy Director of Consolidation, Basti and Others, ; The Special Deputy Collector, Land Acquisition (Industries) Hyderabad Vs. Nawab Turab Yar Jung and Others, ; AIR 1978 SC 335 (Indian Statistical Institute v. Associated Builders) and Union of India (UOI) Vs. Ram Charan and Others, .

4. The learned Advocate for the opposite party has argued that the learned Judge was satisfied that there was sufficient cause for the delay and he has used his discretion in condoning the same. The High Court in revision should not interfere with the said discretion exercised by the learned Court below. The learned Advocate has contended that the opposite party is the Railway establishment dealing with innumerable cases and this fact should also be considered in deciding the question whether there was sufficient cause. The learned Advocate for the opposite party has referred to the case of Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Others, and has contended that as the learned Judge has condoned the delay, there is no ground for this Court to

interfere with the same.

5. In *Inder Singh Des Raj and Others Vs. Harnam Singh Gian Singh*, , it has been held that if it is shown that the Court below in exercising its discretion in the matter of extension of time u/s 5 of the Limitation Act has acted unreasonably or capriciously or has ignored relevant facts, the Appellate Court would be entitled to interfere with the said discretion.

6. In *The Special Deputy Collector, Land Acquisition (Industries) Hyderabad Vs. Nawab Turab Yar Jung and Others*, , it has been held that the expression "sufficient cause" in Section 5 of the Limitation Act cannot be construed liberally. A party has to show why it did not file an appeal on the last day of the limitation prescribed and it means that the party will have to show sufficient cause not only for not filing the appeal on the last day, it will have to explain the delay made thereafter day by day. It has been held that there is no question of construing the expression "sufficient cause" liberally if the party in default is the Government. No distinction can be made between a private citizen and State in these matters. In this case, their Lordships followed the decisions of the Supreme Court in *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, ; *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, and *Union of India (UOI) Vs. Ram Charan and Others*, .

7. In *the Union of India (UOI) Vs. Ram Charan and Others*, it was held that there was so question of construing the expression "sufficient cause" liberally either because the party in default was the Government or because the question arose in connection with the impleading of legal representatives of the deceased respondents. In this case, it has been held that the Court should not readily accept whatever the party alleges to explain away its default. It has to scrutinise the merits of the evidence led to establish the cause for the default in applying within time.

8. In *Nrisingha Charan Nandy Choudhury Vs. Trigunand Jha Khoware and Others*, , it has been held that the superior Court has power to interfere with a wrong exercise of discretion by the subordinate Court both in its revisional and appellate jurisdiction.

9. In the instant case, it appears that the learned Judge has not properly exercised his discretion. He found that there was a delay of 16 days in filing the appeal. It is true that the opposite party applied for certified copies of judgment and decree even before the decree was drawn up. The grounds of delay, however, should have been properly scrutinised by the learned Judge. The learned Judge misdirected himself when he put the opposite party in a privileged position on the ground that the Railway was a big establishment and it had to defend too many suits filed by different parties to it. The law is that in the matter of condonation of delay the opposite party being a big Railway establishment cannot be distinguished from an ordinary litigant and the opposite party had to explain each day's delay satisfactorily. The ground urged by the opposite party

was too vague as it was stated that the copies of judgment and decree were misfiled with the records of a different suit. Particulars of the suit in which copies of judgment and decree were alleged to have been misfiled have not been stated. The learned Judge has not also come to any finding that the said copies of the judgment and decree were actually misfiled. He has merely held that it was quite probable that the said copies were misfiled in the Head Office of the Railway. The Railway cannot claim indulgence on that ground and the exercise of the discretion by the learned Judge appears to be a wrong exercise from the facts and circumstances of the case. In order to deprive the petitioner of a valuable right which accrued to him by lapse of time it was necessary for the opposite party to explain the delay satisfactorily. The opposite party has failed to do that. The learned Judge has acted with material irregularity and the petitioner has suffered irreparable injury. This is a fit case where this Court should interfere.

10. The Rule is made absolute. The impugned order is set aside and the opposite party's application u/s 5 of the Limitation Act is dismissed. There will be no order as to costs.