
(1998) 07 RAJ CK 0001

In the Rajasthan High Court

Case No : Civ. Spl. Appeal (Writ) No. 949 of 1998

Collector and Authorised Chief Settlement, Commissioner,
Sriganganagar

APPELLANT

Vs

Darshan Singh and Others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1999 Raj 84 : (1999) 2 CivCC 174 : (1999) 1 RLW 107 : (1999) 1 WLC 486

Hon'ble Judges : R.R. Yadav, J;A.S. Godara, J

Bench : Division Bench

Advocate : U.C.S. Singhvi, for the Appellant;

Final Decision : Dismissed

Judgement

1. The present Special Appeal has been filed along with an application u/s 5 of the Limitation Act, supported with an affidavit. It is reported to be barred by lapse of time by 535 days.

2. Appellants are not disputing due service of notices upon them in the writ petition before the learned single Judge. One of the cause shown by them for condonation of inordinate delay of 535 days in filing the instant lime-barred appeal is that the writ petition was decided by learned single Judge on 14-8-96 in which neither reply was filed nor the case was attended by the State counsel or Panel lawyer in the absence of file of the case. The aforesaid cause shown by the appellant in filing the present Special Appeal after inordinate delay of 535 days cannot said to be sufficient within the meaning of Section 5 of the Limitation Act.

3. We are of the opinion that once notices were duly served upon the respondents the appellants ought to have filed reply and Stale counsel or Panel lawyer ought to have attended the case when the case was called on for hearing.

Non-availability of the file of the case to the State counsel or Panel lawyer is no ground for condonation of inordinate delay of 535 days. After service of notices upon the appellants, non-filing of reply in the writ petition is grossest negligence on the part of appellants.

4. In paragraph 2 of the application for condonation of delay, it is averred that Officer Incharge of the case visited Jodhpur on 30-9-96 (after expiry of limitation prescribed for filing a Special Appeal) then he came to know about the order dated 14-8-96 passed by the learned single Judge and on the same day an urgent application was moved for certified copy of the order. It is apparent from perusal of certified copy of the order that it was received on 14-11-96 but it was sent to Government on 26-11 -96 for processing the matter for filing the present appeal. There is no explanation of 12 days as to why certified copy was not sent to Government on the next day or within reasonable time, specially when the certified copy was applied and obtained by appellants after expiry of limitation prescribed for filing the present appeal. There is no explanation on which date certified copy of order impugned was received in the office of Government. There is further no explanation as to why when certified copy was sent to Government on 26-11 -96 then Government sent for legal opinion after inordinate delay of 8 months and 22 days on 17-9-97, specially when it was within the knowledge of the State Government that certified copy of order was applied and obtained after expiry of limitation prescribed for filing a Special Appeal.

5. It is not explained when Government Advocate gave his legal opinion on 19-11-97 then why the present appeal was filed before this Court on 2-3-98. We are not satisfied with the explanation given by the appellants from 19-11-97 to the date of filing of appeal on 2-3-1998. It is averred in paragraph 3 of the application for condonation of delay that after receiving legal opinion on 19-11-97 Government took decision to file the present appeal on 5-12-1997. The Officer Incharge to do pairvi in the case was appointed by State Government on 22-12-1997 yet the appeal was filed on 2-3-1998 after expiry of 61 days. Explanation given in this respect is that the present appeal could not be filed as there was Winter vacation during those days. Suffice it to say in this regard that High Court opened on 2nd of January, 1998 after Winter vacation and it is not believable that the appellants were prevented to file the appeal due to intervening of the Winter vacation of this Court. The High Court opened on 2nd January, 1998 whereas the present appeal was filed on 2-3-1998 after expiry of 59 days.

6. In the backdrop of the facts and circumstances stated hereinabove, the averments made in the application for condonation of delay regarding second inning of further seeking of opinion of Government and legal opinion of the Government Advocate are after-thought and as such, not believable. The explanation given in the application after appointment of Officer Incharge in the case on 22-12-1997 up to filing of the appeal on 3-2-1998 does not inspire confidence and as such, it is rejected.

7. We are of the view that there are no reason why the respondents should be exposed to this time barred appeal. It is well to remember that once an appeal has become time barred, a vested right accrued in favour of the opposite party. In present facts and circumstances of the case, we see no reason to divest the respondents from their vested rights which accrued to them due to failure of the appellants in filing a Special Appeal against them within limitation.

8. It is urged by the learned counsel for the appellants that the expression "sufficient cause" in Section 5 of the Indian Limitation Act must receive liberal construction in favour of State so as to advance justice. According to the learned counsel for the appellants the decisions of Government are collective and institutional decisions, therefore, they cannot be treated at par with the private individuals. According to him, certain amount of latitude is, therefore, not impermissible in those appeals which are preferred by State Government.

9. We have given our thoughtful consideration to the aforesaid submissions made by learned counsel for the appellant. In our opinion, aforesaid contentions of the learned counsel for the appellants are although attractive but fallacious on the peculiar facts of the case. The expression "sufficient cause" in Section 5 of Limitation Act must receive liberal construction not only in an appeal filed by State but in any appeal filed by an individual citizen as well. The approach of this Court should always be justice oriented in case of State and also in case of any individual without any discrimination inasmuch as the law of limitation u/s 5 of the Limitation Act is the same for private citizen as for Governmental authorities. Each case has to be considered on particularities of its own facts. If in the present appeal, no "sufficient cause" is shown then in such a situation, this Court cannot afford to raise any presumption about "sufficient cause" in favour of State in the garb of liberal interpretation of "sufficient cause" used u/s 5 of Limitation Act as suggested by learned counsel for the State exposing the respondents to this time barred appeal simply because it has been filed by State.

10. It is true that mala fide of an officer or officers in filing an appeal time barred cannot be imputed to the Government but here in the present case, no mala fide has been alleged against any of the governmental authority who can be said to have fraudulently prevented the Government to file the present appeal within time. No reasons have been brought to our notice which can be said to be either bona fide or can be said to be of compelling nature beyond the reasonable control of the State Government which may have prevented it to file the present appeal within limitation.

11. We are satisfied in the present case that there is no reason whatsoever to expose the respondents to the present time barred appeal.

For all the aforesaid reasons, we do not find any merit in the instant application moved u/s 5 of the Limitation Act which is, accordingly, dismissed and the special appeal filed u/s 18 of the Rajasthan High Court Ordinance, 1949 is also dismissed as barred by time, without exposing to the respondents to whom

vested rights have accrued due to non-tiling of regular appeal within limitation.