
(2014) 11 P&H CK 0199

In the Punjab And Haryana At Chandigarh

Case No : CM Nos. 5127 and 5128 of 2014 in CWP-2427-1985

Dargah Char Qutub Hansi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1963 — Section 5

Citation : (2014) 11 P&H CK 0199

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Dinesh Ghai, Advocate for the Appellant

Judgement

Paramjeet Singh, J.—CM-5127-CWP-2014 has been moved under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of about 3446 days in filing application i.e. CM-5128-CWP-2014 for restoration of CWP-2427-1985.

2. Brief facts of the case are to the effect that applicant no. 1- Dargah Char Qutub, Hansi is stated to be managed by Shah Kutubul Alam Sahib Jamali, Sajjada Nashin and its Manager has been impleaded as applicant no. 2. The property is alleged to have been declared evacuee property. Originally, writ petition was filed through Viqar-Ur-Rehman Jamali son of Shah Kutub Alam Sahib being general power of attorney. Shah Kutub Alam Sahib Jamali expired during the pendency of writ petition on 15.12.1999 and thereafter his legal heirs were brought on record.

3. Since I have to deal with the application for condonation of delay in filing the application for restoration of writ petition and the application for restoration of writ petition, therefore, I need not go into the merits and other facts of the case.

4. It is mentioned in the application for restoration of writ petition that the writ petition was admitted on 25.11.1985 and after admission, it was the impression

of the applicants that case would not be heard for many years. It needs to be noticed that vide order dated 24.03.2003, legal heirs of petitioner no. 2 had been impleaded. Thereafter, the matter was listed on many occasions, but no one turned up and ultimately writ petition was dismissed for non-prosecution on 21.08.2004.

5. I have heard learned counsel for the applicants and perused the record.

6. The issue of unreasonable or inordinate delay has received attention in several cases in our courts of law. There are no hard and fast rules as to the manner in which the discretion to condone delay in filing application for restoration of writ petition dismissed for non-prosecution, is to be exercised. Often, period of delay and reason thereof, the prejudice, if any, caused to the respondents is taken into account. A close and careful examination of all these circumstances will determine whether delay should be condoned or not. There may be instances in which delay is relatively slight but serious prejudice is caused to the respondents and in other cases delay may be inordinate but prejudice is slight. Basically, the Court while condoning delay take into account sufficient cause and reasons for delay. In view of this, it would be highly undesirable and indeed impossible to attempt to lay down a specific period i.e. so many years, more on the one side, lessor period on the other side. What is or is not inordinate or unreasonable delay depends upon the facts of each particular case. These vary from case to case, if delay is inordinate credible excuse is necessary to explain it otherwise natural inference would be that it is an inexcusable. These factors have been considered in numerous cases by various Courts of law. While assessing the delay objectively, it is to be seen from the point of view that due to delay the party has lost interest in pursuing the matter. In the present case, following factors are required to be considered for condonation of delay:-

a) Is the delay in filing of the application for restoration of writ petition is highly excessive and is there any reasonable explanation for the delay?

b) Will the respondents suffer, if delay is condoned?

7. So far as factor (a) in the present case is concerned, the delay of about 3446 days is apparently excessive. Admittedly, the applicants were aware that application for impleading the legal heirs of applicant no. 2 was allowed on 24.03.2003 and the case was dismissed for non- prosecution on 21.08.2004. The applicants became party in the year 2003 and the case was already on the Board. After impleading the legal heirs of petitioner no. 2, the case was listed on 05.03.2004. On 05.03.2004, Mr. I.K.Mehta, learned counsel for the petitioners appeared and the matter was adjourned to 19.03.2004. On 19.03.2004, Mr. R.K.Dogra, Advocate put in appearance on behalf of the petitioners and rejoinder on behalf of the petitioner to written statement of respondent no. 3 was taken on record. Thereafter, on 17.07.2004 and 21.08.2004, none appeared on behalf of the petitioners and ultimately, writ petition was dismissed for non-prosecution. The present applications have been filed through another counsel. There is no

affidavit of earlier counsel that they were not aware of listing of the case or case came for hearing all of sudden. The learned counsel for the petitioners had been appearing from time to time, but when the case was at the stage of arguments, no one turned up and ultimately it was dismissed for non-prosecution. There is no cogent explanation for delay of about 3446 days in filing application for restoration of writ petition. In my view, the explanation furnished for condonation of excessive delay is not believable and no cogent reasons and sufficient grounds have been given for condoning excessive delay of 3446 days. The inference is irresistible that the applicants-petitioners had decided for unexplained reasons not to file restoration application within limitation. In Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, , it has been held as under:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant -- a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years" delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others" ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons -- who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

8. So far as factor (b) is concerned, the opposite party will suffer, if delay is

condoned. The opposite party always expects that matter is brought to finality and it cannot be kept waiting for indefinite time to see that restoration application can be filed at any time. Once a period of statutory limitation expires, delay becomes sufficiently protracted, it becomes a sufficient and just ground to dismiss application for condonation of delay. Inordinate and unreasonable delay in filing the application for condonation of delay constitutes an abuse of process of Court and warrants dismissal of the application. It is also the duty of the applicants-petitioners to ensure that application for restoration of writ petition should be filed within time frame in accordance with the provisions of law so that the matter may attain finality.

9. In view of the facts and circumstances narrated above, I am of the considered opinion that applicants-petitioners have failed to make out a case justifying condonation of inordinate delay of 3446 days in filing the application for restoration of writ petition.

10. Consequently, application for restoration of writ petition also fails.

11. Resultantly, the application for condonation of delay is dismissed and the application for restoration of the writ petition is dismissed as time barred.