
(2008) 08 DEL CK 0066

In the Delhi High Court

Case No : Criminal M. No. 6974 of 2006 in Criminal A. No. 547 of 2008

Enforcement Directorate

APPELLANT

Vs

Lord Shiva Enterprises and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Limitation Act, 1963 — Section 5

Citation : (2008) 08 DEL CK 0066

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Rajdipa Behura, for the Appellant; Tarun Diwan, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

Crl.M.A. No. 6974/2006

1. This is an application by the appellant u/s 5 of the Limitation Act seeking consideration of delay in filing the present appeal against the order dated 31st March, 2006 of the Appellate Tribunal for Foreign Exchange. The appellant has contended that on 25th May, 2006, the counsel was instructed to file an appeal and the appeal had been filed on 5th July, 2006. The certified copy of the impugned order dated 31st January, 2006 was received in the Enforcement Directorate on 22nd February, 2006. The impugned order was examined till 7th March, 2006 and was put up to the Review Committee for consideration and after review on 21st April, 2006 the file was submitted to D.E. for final approval to file the appeal in the High Court. It is stated that from 8th May, 2006 to 16th May, 2006 the competent authority after discussion ordered the appeal to be filed before the Court and from 18th May, 2006 to 24th May, 2006 the Zone was intimated to file the appeal. Since the file was received on 25th May, 2006, the appeal was prepared and could not be filed before the vacation in 2006 which

started on 3rd June, 2006 and was filed on 5th July, 2006 and there is a delay of 46 days.

2. The appellant had contended that in the interest of conservation of foreign exchange resources of the country and for their appropriate utilization, and in the interest of economic development of the nation, the delay of 46 days in filing the appeal be condoned as there is sufficient cause for consideration of delay as contemplated u/s 5 of the Limitation Act.

3. Learned Counsel for the appellant has also relied on State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, , Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, , State of Haryana Vs. Chandra Mani and others, , N. Balakrishnan Vs. M. Krishnamurthy, and Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . to contend that the delay is liable to be condoned. The application is opposed by the respondents and reply has been filed contending inter alia that the application does not disclose any bonafide reason for consideration of delay in filing the appeal. Reliance has also been placed on 2007 IV AD (Delhi) 458 Union of India v. Wishwa Mittar Bajaj and Sons and Ors. It has also been contended that the vacation started from 3rd June, 2006 and ended on 3rd July, 2006 and the appeal has been filed on 5th July, 2006 though it could have been filed prior to that and especially since the Registry opened on 29th June, 2006. The other averments made in the application were also denied.

4. I have heard the learned Counsel for the parties in detail and have perused the precedents relied on by them. The appellant has given the details as to when the certified copy was received, how it was considered and how the file was sent to different authorities for taking decision and how the file was ultimately given to the counsel on 25th May, 2006 who ultimately filed the appeal on 5th July, 2007. The application of the appellant is supported by the affidavit of Shri K.J. Rao, Assistant Director of the Enforcement Directorate. Though the respondent has denied the averments made by the appellant, however, considering the facts and circumstances, I have no reason to disbelieve the pleas of the petitioner regarding various stages through which the file moved and the decision was taken to file an appeal.

5. The apex Court has also held that court should adopt a liberal approach while considering the consideration of delay in filing the appeals. In Collector, Land Acquisition, Anantnag and another (supra), the Supreme Court had held that experience shows that on account of impersonal machinery and the inherited bureaucratic methodology, cause of the community which is represented by the State does not deserve a non grata status and consequently while taking into consideration the interpretation of sufficient cause, all the relevant factors should be considered. The Apex Court laid down that a liberal approach should be adopted while construing the sufficient cause for consideration of delay, as ordinarily a litigant does not stand to benefit from lodging an appeal late and refusing to condone the delay can result in a meritorious matter being thrown

out at the very threshold and cause of justice being defeated. It was also held that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of malafides. It was held that the 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.

6. Similarly in *N. Balakrishnan (supra)*, the apex Court had held that the object of fixing the time limit is not meant to destroy the rights and it is founded on public policy of fixing a life span for the legal remedy in the general welfare. The apex Court in Para 11 at page 127 had held as under:

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would support up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublice up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. In *State of Haryana (supra)*, the apex Court relying on *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, had held that in inferring the sufficient cause to condone the delay, it is not necessary that a litigant has to explain delay of the period between the date of the judgment till the date of the filing of the appeal. It was observed that it is sufficient if the litigant would explain the delay caused in the period between the last of the dates of limitation and the date on which the application is actually filed. The apex Court was of the view that no hard and fast rule can be made to infer or ascertain 'sufficient cause' because the expression 'sufficient cause' should receive a liberal construction. It was held that what is to be seen is that the litigant has acted with reasonable diligence in prosecuting the appeal.

8. Dealing with the delays on the part of the government, in *Special Tehsildar, Land Acquisition, Kerala (supra)*, it was held that the object of the court should be pragmatic and not pedantic and the government should not be insisted to explain every day delay. In the present case for consideration of delay, the details have been given as to when the certified copies was received and who considered the file and at what stages the decision was ultimately taken to file the appeal and the time taken by the counsel for filing of the appeal. Considering the entirety of facts and circumstances, it is difficult to infer that there is no

sufficient cause as contemplated under the law in the facts and circumstances. The apex Court had also held in *State of Bihar and Others (supra)* that the power to condone the delay in approaching the court has been conferred to enable them to do substantial justice and decide the matters on merit.

9. The judgment relied on by the respondent was u/s 34 of Arbitration and Conciliation Act, 1996. In the said judgment though a decision was taken to file the appeal in July and there was a stipulation that urgent steps be taken, still for almost three months nothing was done and considering the various other facts of the case, the delay was not condoned in filing the objections to the award u/s 34 of the Arbitration and Conciliation Act, 1996. Apparently, the judgment relied on by the respondent is distinguishable.

10. There are no other factors which will disentitle the appellant for consideration of delay in the facts and circumstances as there is sufficient cause as contemplated under law.

11. Therefore, for the foregoing reasons, there is sufficient cause for consideration of delay in filing the appeal. The application of the appellant is, therefore, allowed and delay of 46 days in filing the appeal is condoned.

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12. Adjourned at the request of counsel for the respondent. List on October 24, 2008.