

(2016) 04 DEL CK 0138
In the Delhi High Court
Case No : LA APP. 54 of 2014

Gaon Sabha Sahabad Daulatpur

APPELLANT

Vs

Janak Raj Rawal & Ors.

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 166 AIC 569 : (2016) 231 DLT 145

Hon'ble Judges : Mr. Ashutosh Kumar, J.

Bench : Single Bench

Advocate : Mr. Naushad Ahmed Khan, ASC with Ms. Neelam Kholiya, Advocate, for the Appellant; Mr. Sunil Dahiya, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Ashutosh Kumar, J.(Oral) - CM Appln. 2777/2014 (under Order 41, Rule 3A of the Limitation Act).

This is an application for condonation of delay of 1155 days in preferring the appeal against the judgment dated 01.09.2010 passed in LAC No.110B/2008, relating to award no.1/98-99, pertaining to Village Shahbad, Daulatpur.

2. It has been submitted that the delay was because of administrative reasons.

3. It is submitted that the Senior Village Level Worker in the office of Block Development Officer (North West) was on leave and therefore he did not inform the department about the requirement of filing the appeal in the High Court.

4. Later another person succeeded the Senior Village Level Worker who sent the file to the BDO (North West) for the needful.

5. On 29.04.2011, BDO (North West) after going through the file and the judgment, suggested that the appeal be filed and also suspended for gross negligence the earlier Village Level Worker who had not informed about the judgment. The file thereafter was sent to the Office of the Deputy Commissioner

(North West) who signed it on 09.05.2011 and sent it to the Directorate (Panchayat). The file was thereafter sent back to the BDO on 13.05.2011.

6. The file kept on moving between various offices and therefore there was delay in preferring the appeal.

7. Learned counsel for the appellant/applicant has submitted that the delay is bona fide and unintentional and that the balance of convenience is in favour of the appellant/applicant.

8. The aforesaid contention of the appellant/applicant is stoutly objected to by the respondents. It has been submitted on their behalf that the provisions of the Limitation Act casts a duty on the Court to dismiss any suit, appeal or application if it is made after a prescribed period.

9. The reasons assigned by the applicant, it is argued, is bogus, absurd and unbelievable and does not disclose any cause much less "sufficient cause".

10. The law of limitation, is based on the legal maxim "Interest Reipublicae Ut Sit Finis Litium" which means that it is for the general welfare that a period be put to litigation. If legal remedy is kept alive beyond the legislatively fixed period of time, it only generates dissatisfaction. The parties cannot be allowed to have an unbridled and unfettered free play in matters of timing of approaching the Court. The Courts, the Supreme Court asserted, must keep in mind while dealing with the limitation petition that there is a distinction between the delay for a plausible reason and delay because of inaction or negligence which deprives a party of the protection of Section 5 of the Limitation Act, 1963.

11. Without disputing the aforesaid well established principles regarding the law of limitation, there is another aspect, equally important, which cannot be lost sight of. The Supreme Court has, on number of occasions opined that the expression "sufficient cause" ought to be interpreted in a manner which subserves the cause of justice for which the institutions of justicing stand for. When a case with arguable points is shut out on prescriptions of limitation, it results in throwing out a good case at the threshold with the only necessary implication of injustice being perpetuated and justice being defeated. The expression "sufficient cause" cannot be interpreted in an iron frame. The expression "sufficient cause", in the words of the Supreme Court, is sufficiently elastic for the purposes of a meaningful interpretation. A serious note of caution has been sounded by Supreme Court against any pedantic or hyper technical approach in dealing with limitation petitions, more so, when stakes are high and there is availability of arguable points of law.

12. A Court cannot turn away its sight from the fact that no litigant benefits by approaching the Court late. Without any good reason, nobody would like to have his claim extinguished and more often than not, any good reason would dovetail into sufficient reason for approaching the Court after the period of limitation.

13. In *Ramlal v. Rewa Coalfields Ltd.*, AIR 1962 SC 361, the Supreme Court,

while interpreting Section 5 of the Limitation Act, laid down the following proposition:

"In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

14. In *Collector, Land Acquisition, Anantnag v. Mst. Katiji*, (1987) SCC 107, the Supreme Court made a significant departure from the earlier judgments and observed:

"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

15. In *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123, the Supreme Court expanded the scope and ambit of law of limitation and elucidated as follows:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court. 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 sprout 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 reipublicae ut 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. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

16. In *State of Nagaland v. Lipok AO*, AIR 2005 SC 2191, the Supreme Court has observed that justice-oriented approach should be adopted. Unless a pragmatic view is taken, injustice is bound to occur.

17. In the background of the aforesaid legal principles and facts stated in the application, this Court is of the opinion that the benefit of doubt could be given to the appellant/applicant.

18. There does not appear to be uncondonable negligence on the part of the appellant/applicant as good faith and bonafides do not appear to be wanting.

19. This Court is inclined to condone the delay in filing the appeal.

20. The delay is, therefore, condoned and the application is disposed of accordingly.

LA.APP.54/2014

1. Admit.

2. List the appeal in the category of "Regulars" as per its own turn.