

(2017) 09 MAN CK 0005

In the Manipur High Court

Case No : 5 of 2017 IN MAC Appeal No 2 of 2017

Haji Ansar Ali, & Anr.

APPELLANT

Vs

Mrs. Khalida Begum, & Ors.

RESPONDENT

Date of Decision : 14-09-2017

Acts Referred:

Citation : (2017) 09 MAN CK 0005

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : S. Rupachandra, A. Gautam Sharma

Judgement

1. Heard Shri S. Rupachandra, the learned Sr. Advocate appearing for the applicants/ appellants and Shri A. Gautam Sharma, the learned counsel appearing for the respondent No.1. None is present for the respondent No. 2.

2. This is an application filed by the applicants/ appellants praying for condonation of delay of 140 days in preferring the appeal being MAC Appeal No.2 of 2017 which was preferred against the judgment and award dated 26-08-2016 passed by the MACT, Manipur. The grounds on which the said appeal has been preferred, are that the applicants/ appellants were not aware of the judgment and award dated 26-08-2016, as a copy thereof was not furnished to them by their former counsel and only on 21-04-2017 when the payment and release of compensation amount was on the way, the applicants/ appellants came to know about the existence of the said judgment and award dated 26-08-2016. After the notice being issued by this court in the application for condonation of delay, the respondent No.1 entered appearance through her counsel and filed an objection to the said application on the ground that there is no sufficient cause being shown to by the applicants/ appellants for condonation of delay in preferring the appeal.

3. It has been submitted by Shri S. Rupachandra, the learned Senior Advocate appearing for the applicants/ appellants that since the delay has been properly

explained in the application, the same can be allowed by this court. In order to substantiate his contention, the learned senior counsel appearing for the applicants/ appellants has placed reliance on the decision of the Hon''ble Supreme Court rendered in *K. Rudrappa Vs. Shivappa* reported in 2004 (9) SBR 474 wherein the appellant filed an application for setting abetment as well as an application for condonation of delay in bringing LRs on record on the ground that he was not aware of the pendency of the appeal and came to know about it only when he received a communication from the advocate which were rejected by the District Court and the civil revision petition preferred against it before the Hon''ble High Court also failed. When the matter came up before the Hon''ble Supreme Court, it has been held that a hyper-technical view ought not to have been taken by the District Court in rejecting the application and such technical objections should not come in doing full and complete justice between the parties. He has placed further reliance in *Manoharan Vs. Sivarajan & ors.*, (2014) 4 SCC 163 wherein the appellant filed a suit for mandatory injunction; for declaration of the sale deed executed by the respondent No.1 as null and void; for execution of re-conveyance and consequential relief, for which the appellant paid 1/10th of the court fee. Thereafter, an application for extension of time for payment of the remaining court fee was rejected and against it, an appeal was preferred with condonation of delay which was dismissed on the ground of no proper explanation. The appeal preferred before the Hon''ble Supreme Court by way of special leave was allowed condoning the delay by holding that it is clear from the evidence on record that the appellant could not pay court fee due to financial difficulty because of which his suit got rejected. It has been observed that it is the duty of the courts to see that justice is meted out to people irrespective of their socio-economic and cultural rights or gender identity.

4. Combating the contention of the learned counsel appearing for the applicants/ appellants, Shri A Gautam Sharma, the learned counsel appearing for the respondent No.1 has submitted that there is no explanation for the delay in preferring the appeal at all and in support of his contention, he has relied upon the decision rendered in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & ors.*, (2013) 12 SCC 649 wherein the question was as to whether the Hon''ble High Court of Calcutta was justified in condoning the delay of 2449 days in preferring an appeal against the interim order passed by the learned Single Judge. The Hon''ble Supreme Court, after referring to its earlier decisions, has summarised the principles as under:

"21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a

routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

5. It is not in dispute that the judgment and award, against which the instant appeal has been preferred, was delivered and pronounced on 26-08-2016. According to the applicants/ appellants, a certified copy thereof was applied on the next day i.e., 27-08-2016 and the same was ready on 22-09-2016 and therefore, after deducting the statutory period of 90 days as well as the time taken by the court while preparing the certified copy, there is a delay of 140 days in preferring the appeal. The explanations given by the applicants/ appellants in their application for the delay, are given as under:-

"8. That, the original certified copy of the order was submitted to the Insurance Company on 26-09-2016 and the fresh certified copy was applied on 27-04-2017 and the same was furnished on the same day.

9. That, the applicants were never furnished/ shown the copy of the judgment and Award compensation dated 26-08-2016 by their former counsel. Since the payment and release of the compensation amount is on the way, the applicants came to know the existence of offending part of the judgment and Award only on 21-04-2017."

The averment made in para 8 (first one) of the application that a certified copy of the judgment and award dated 26-08-2016 was applied on 27-08-2016 and the same was received on 22-09-2016, appears to be contrary to the information available in the certified copy itself filed along with the memorandum of appeal. It is evident from the certified copy which is on record that it was applied on 22-09-2016 and the same was ready and delivered on the same day. If that be the case, the delay in preferring the appeal ought to be 166 days and not 140 days as computed by the applicants/ appellants. The correct facts are not placed on record but rather, misleading.

6. On perusal of the averments made hereinabove, it is seen that on the one hand, the applicants/ appellants have stated that on 26-09-2016 the original certified copy of the judgment and award had been submitted to the Insurance Company and on the other hand, it has been stated that a copy of the judgment and award was never furnished to them nor was it shown to them by their former counsel. The averments made by the applicants/ appellants in the said two para 8 & 9 of the application appear to be conflicting each other. It is not disclosed as to who submitted the certified copy of the judgment and award to

the Insurance Company. If it had been submitted by the applicants/ appellants, their averment that a copy of the judgment and order was never furnished nor was it shown to them by their former counsel, will be incorrect. If it had been submitted by their former counsel, it is difficult to understand as to how the same certified copy which had already been submitted to the Insurance Company, could be filed along with the instant memorandum of appeal. Moreover, it has been stated by the applicants/ appellants that they came to know about the offending part of the judgment and award only on 21-04-2017 and accordingly, a fresh certified copy was applied on 27-04-2017 which was received by them on the same day. This averment is also unbelievable for the reason that if the certified copy, filed along with the memorandum of appeal, was already there in their possession, there was no need of applying for a fresh certified copy of the judgment and award on 27-04-2017. It may be noted that the certified copy which was received by them on 27-04-2017 is not placed on record nor is it filed along with the present appeal and the fact that the certified copy which was received on 22-09-2016, was filed along with the memorandum of appeal, shows that they were aware of it well in advance. Thus, the applicants/ appellants appear to have not come before this court with clean hands and on the contrary, the contention of the learned counsel appearing for the respondent No.1 appears to be correct that the applicants/ appellants lack bonafide in their approach before this court and that too, after having received their 2/3 share of the compensation on 24-04-2017 with a guilty mind to interfere with the remaining 1/3 share of the respondent No.1. The decisions of the Hon''ble Supreme Court relied upon by the learned counsel appearing for the applicants/ appellants will have no application to the facts of the present case for the reason that the facts of those cases are not similar to that of the present case. It is well settled that no indulgence be shown to persons who approach the court without clean hands. Having heard the learned counsels appearing for the parties, this court is of the view that there is no proper explanation for the delay in preferring the appeal and therefore, the application for condonation of delay is liable to be rejected.

7. For the reasons stated hereinabove, the application being MC (MAC App.) No.05 of 2017 is dismissed with no order as to costs.