

(2003) 11 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : C.M.P. (M) No. 470 of 2002

H.P. State Electricity Board and Another	APPELLANT
Vs	
Rikhi Ram and Others	RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2004) 1 ShimLC 46

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Kuldip Singh and Bimal Gupta, for the Appellant; K.D. Sood, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—This is an application u/s 5 of the Limitation Act for condonation of delay in filing the appeal against the judgment and decree dated 1.3.1999 passed by the learned District Judge, Una, in Civil Appeal No. 118 of 1996.

2. The relevant facts leading to the filing of the present application are that Respondents No. 1 and 3 to 6 instituted a suit for possession of land comprised in Khewat Khatauni No. 997min/1415 situate in Village Gagret, Tehsil Amb and for injunction restraining the Defendants from interfering in the suit land in any manner. Case of the Respondents is that they along with Respondent Sat Parkash are co-owners in possession of the suit land which remained under their cultivation till December, 1988. In December, 1988 the applicants through their employees and servants started encroaching upon the suit land and by early 1989 covered it by pucca brick wall abutting the road without any right, title or interest. The Respondents being residing outside because of employment came to know about this unauthorised encroachment subsequently and when their demand not to interfere with the land was declined by the applicants, they instituted the suit.

3. The suit was contested by the applicants on the grounds of maintainability, estoppel, limitation, want of cause of action, non-joinder of necessary parties, locus standi and jurisdiction. On merits, it was claimed that the suit land earlier formed part of Punjab and was acquired by Punjab State Electricity Board along with other land, measuring 45 kanals for construction of 33 KV Service Station. Two awards regarding acquisition were made on 25.4.1963 and 7.1.1964. After the awards the possession was taken over by the Punjab State Electricity Board and 33 KV service station was installed, besides constructing a few residential and office buildings and the remaining land was covered by fencing. Subsequently, the area was merged with the State of Himachal Pradesh and the assets of Punjab State Electricity Board thus became the property of H.P. State Electricity Board in the year 1966. It is further claimed that the amount of compensation as awarded was deposited in the State Treasury at Hoshiarpur. In the alternative, it has been claimed that the applicants had been in possession of the suit land continuously for more than 20 years, therefore they have become owners by way of adverse possession.

4. The trial Court on the basis of the evidence led by the parties to prove their rival claims dismissed the suit vide judgment and decree dated 2.9.1996. Respondent No. 1 preferred an appeal against the said judgment and decree in the Court of learned District Judge, Una, who vide his judgment and decree dated 1.3.1999 set aside the judgment and decree passed by the trial Court and directed the applicants to get the suit land acquired within a period of two years in accordance with law failing which to deliver the possession of the suit land to the Respondents.

5. The applicants presented memo of the appeal along with this application for condonation of delay on 26.8.2002 i.e. after the appeal had become time barred by 3 years, 3 months and 8 days.

6. The delay in filing the appeal is sought to be condoned on the ground that the certified copy of the judgment and decree though was received by the applicants in the Sub Division Office on 20.4.1999 but as usual the inferior officer sent the copies to the superior officer and finally the copies were received by applicant No. 2 on 22.4.1999. According to the applicants, its officers could not properly understand the implications of the decree and started writing to the revenue officials to know the position as recorded in the revenue records and to get it demarcated and this correspondence continued till middle of 2002. In the meanwhile, two years period fixed by the learned District Judge for acquiring the suit land expired and the execution applications followed. It was on receipt of notice of execution applications that the applicants sought legal opinion in the matter and were advised to prefer an appeal against the judgment and decree of the District Judge. Against this background, it is claimed that the delay is not intentional or wilful and that in the event of not condoning the delay huge loss and damage to the public property/public exchequer will be caused and that too when the suit land stood acquired and thus gross injustice will be done to the

applicants and the public at large.

7. The application has been resisted by the Respondents on the grounds that there is no sufficient cause for condonation of delay as the appeal is barred by 1184 days and during all this period the Respondents have been deprived of use of their valuable property and that the applicants had been grossly negligent in pursuing the matter, therefore the inordinate delay in filing the appeal cannot be condoned.

8. I have heard the learned Counsel for the parties and have also perused the records.

9. It was contended by the learned Counsel for the applicants that in fact the delay in filing appeal occurred because of the misconception of the officials of the applicants who could not properly appreciate the implication of the judgment and decree and started finding out as to what was the position regarding the land in the revenue records which efforts continued for almost three years. The authorities awakened to the situation only when they got the legal opinion in the matter and thereafter the appeal was filed without any delay. It was further contended that keeping in view the impersonal approach of the functionaries and their misdirected the action to be taken in the matter is a sufficient cause for condoning the delay in the present case where huge and valuable public property is involved and in the event of condonation of delay no prejudice is going to be caused to the Respondents who will be done the justice as warranted by the facts and circumstances of the case even if the appeal is heard and decided on merits.

10. The learned Counsel for the Respondent No. 1 contended that this is a case of inordinate delay in filing the appeal and no sufficient cause is made out for condoning the delay. A valuable right has already occurred in favour of the Respondents which is an additional ground for not condoning the delay in filing the appeal.

11. It is not in dispute that the dispute is between individuals on one hand and the Electricity Board on the other. To act for and to defend the Board is the duty of its officials. It is also not in dispute that the Board is run by public money. It is also not in dispute that the trial Court had held that the land in dispute stood acquired though such findings have been reversed by the lower appellate Court. The averments made in the application are duly supported by affidavit and copies of various documents annexed thereto. It appears that either due to inexperience or lack of requisite knowledge or may be deliberately, the concerned officials of the applicant after receipt of the certified copy of the judgment and decree misdirected themselves in the discharge of their official duties by writing to the revenue officials to carry out the demarcation etc. of the land. Better sense prevailed upon them when the matter came to the notice of Mr. M.L. Bashist, Superintending Engineer (Operation), Circle Una who advised to file an appeal against the judgment and decree and the opinion of the Additional Secretary was then obtained and the appeal was thereafter filed. Keeping in view the misdirect

efforts and the normal delays in moving the file from the table of one public functionary to the table of Anr. , the delay in the cases of public interest and involving public exchequer has to be condoned in the larger interest of justice.

12. In *N. Balakrishnan Vs. M. Krishnamurthy*, the apex Court held as follows:

9. 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, muchless 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 consider 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.

10. The reason for such a different stance is thus:

The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

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. The 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.

12. A Court knows that refusal to condone delay would result in fore- closing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction

so as to advance substantial justice vide *Shakuntla Devi Jain v. Kuntal Kumari and State of W.B.* v. Administrator, Howrah Municipality.

13. 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.

13. In *M.K. Prasad Vs. P. Arumogam*, the Apex Court held as follows :

8. In construing Section 5 of the Limitation Act, the Court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The Court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section. While dealing with the scope of Section 5 of the Limitation Act, this Court in *Ramlal v. Rewa Coalfields Ltd.* held: (AIR pp. 363-64, para 6-7)

6. Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefore when the Appellant satisfies the Court that he had sufficient cause for not preferring the appeal within such period. This section raises two questions for consideration. First is, what is sufficient cause; and the second, what is the meaning of the clause 'within such period'? With the first question we are not concerned in the present appeal. It is the second question which has been decided by the Judicial Commissioner against the Appellant. He has held that 'within such period' in substance means during the period prescribed for making the appeal. In other words, according to him, when an Appellant prefers an appeal beyond the period of limitation prescribed he must show that he acted diligently and that there was some reason which prevented him from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner has held that 'within such period' means the period of the delay between the last day for filing the appeal and the date on which the appeal was actually filed he would undoubtedly have come to the conclusion that the illness of Ramlal on February 16 was a sufficient cause. That clearly appears to be the effect of his judgment. That is why it is unnecessary for us to consider what is 'a sufficient cause' in the present appeal. It has been urged before us by Mr. Andley, for the Appellant, that the construction placed by the Judicial Commissioner on the words 'within such period' is erroneous.

7. In construing Section 5 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. As has been observed by the Madras High Court in *Krishna v. Chathappan*:

Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the Appellant?.

9. Again in *State of W.B. v. Administrator, Howrah Municipality and G. Ramegowda, Major v. Special Land Acquisition Officer*, this Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it. Again in *N. Balakrishnan v. M. Krishnamurthy*, this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the Court should normally condone the delay. However, in such a case the Court should also keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. In that context the Court observed: (SCC p. 127, para 9)

9. 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, muchless 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 consider 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.

14. In view of the above position in law and the facts and circumstances of the case, the delay in filing the appeal by the applicants deserves to be condoned in the public interest and in the interest of justice. However, it cannot be lost sight of that with the passage of time valuable right has accrued in favor of the Respondents. Therefore, they are entitled to be compensated.

15. As a result, this application is allowed and the delay in filing the appeal is condoned subject to payment of costs of Rs. 5,000 by the applicants to the Respondents. Costs to be paid on or before the date on which the appeal will be listed for admission.