

(2019) 03 RAJ CK 0100
In the Rajasthan High Court
Case No : Special Appeal Writ No. 261 Of 2019

Indira Kumari

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2019) 03 RAJ CK 0100

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Ankur Mathur

Final Decision : Dismissed

Judgement

The present application under Section 5 of the Limitation Act, 1963 has been filed by the applicant, seeking condonation of delay of 368 days in filing appeal against judgment and order dated 19.12.2017, passed by the learned Single Judge dismissing her writ petition being S.B. Civil Writ Petition No.16703/2017.

While seeking condonation of inordinate delay of 368 days, the applicant in her application, has inter alia indicated that after dismissal of her aforesaid writ petition vide order dated 19.12.2017, she had filed another writ petition being S.B. Civil Writ Petition No.19353/2018 with a prayer to decide her case in light of subsequent Division Bench judgment dated 17.05.2018 passed by a Division Bench of this Court, in case of Rajkumar Jaiswal Vs. State of Rajasthan. Applicant's second writ petition came to be dismissed by learned Single Judge of this Court vide order dated 09.01.2019 and in an appeal filed thereagainst being D.B. Civil Special Appeal No.109/2019, a Division Bench of this Court while dismissing her appeal as withdrawn, has granted the applicant a liberty to avail appropriate remedy against the order dated 19.12.2017, passed in her earlier writ petition (S.B. Civil Writ Petition No.16703/2017).

A perusal of contents of the application shows that the applicant has not shown

any reason which has led to the delay, except narrating the series of events as aforesaid.

If the facts as narrated by the applicant are examined, it remains undisputed that the applicant's writ petition No.16703/2017 had been rejected on 19.12.2017 and even after passing of the Division Bench judgment dated 17.05.2018 in Rajkumar Jaiswal's case (supra), the applicant has not cared to lay challenge to the order dated 19.12.2017 for more than 7 months.

The applicant's subsequent writ petition being S.B. Civil Writ Petition No.19353/2018, came to be filed on 18.12.2018, which was dismissed by learned Single Judge on 09.01.2019.

While dismissing the applicant's appeal, the Division Bench has granted the applicant a liberty to lay challenge to the order dated 19.12.2017 in the following terms:-

"Thus, taking into consideration the facts and circumstances of the case, we permit the petitioner to withdraw the writ petition no.19353/2018 decided by the learned Single Judge by the order impugned. Accordingly, the writ petition preferred by the petitioner decided by the learned Single Judge by the order impugned is dismissed as withdrawn. The petitioner shall be at liberty to avail appropriate remedy against the order dated 19.12.2017, if any, available under the law."

A bare look at the order aforesaid makes it abundantly clear that the Division Bench of this Court had simply permitted the applicant to avail remedy against the order dated 19.12.2017, but mere such stipulation itself does not give the applicant a ground to seek condonation of inordinate delay of 368 days, as a matter of right.

In the entire application, the applicant has not stated any reason for which she did not lay challenge to the order dated 19.12.2107 at least till the date of filing subsequent writ petition, i.e. on 18.12.2018. The entire premise for seeking condonation of delay, set out in the present application is that the Division Bench has given the applicant a liberty to lay challenge to the earlier order dated 19.12.2017. There is no reason, much less justification for living in hibernation ignoring her rights for a period of one year.

In our considered opinion, grant of liberty to the applicant to challenge the order/judgment dated 19.12.2017, was circumscribed with the expression: "available under the law". The applicant cannot claim condonation of delay as a matter of course.

She is required to show reasonable and bonafide cause for which she was prevented from filing the appeal within the stipulated period of limitation.

In view of the facts and circumstances available on record, we do not find any justifiable reason to condone the inordinate delay of 368 days in filing the

present appeal. The application under Section 5 of the Limitation act is, therefore, dismissed.

As a corollary of dismissal of applicant's application under Section 5 of the Limitation Act, her appeal [D.B. Civil Special Appeal (W) No.261/2019] as well as the stay application filed along with the appeal [Stay Application No.3181/2019] are also dismissed.