

(2021) 12 J&K CK 0046

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 180 Of 2021, Civil Miscellaneous No. 8362, 8363 Of 2021

Jana & Anr

APPELLANT

Vs

Rehti & Ors

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Citation : (2021) 12 J&K CK 0046

Hon'ble Judges : Ali Mohammad Magrey, J; Mohd. Akram Chowdhary, J

Bench : Division Bench

Advocate : Sheikh Hilal

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

CM No. 8362/2021:

1. By this motion, the applicants/ appellants are seeking condonation of delay in filing the appeal against the Judgment dated 3rd of March, 2016 passed by the learned Single Judge in Writ Petition bearing OWP No. 281/2016 filed by the Writ Petitioners/ Respondent Nos. 1 and 2 herein. As per the note of the Registry, there is a delay of 2051 days that has occasioned in the filing of the aforesaid appeal.

2. We have heard Mr Sheikh Hilal, the learned Counsel for the applicants/ appellants, perused the pleadings on record and have considered the matter.

3. At the very outset, what requires to be stated is that it cannot be disputed that the 'Law of Limitation' has to be applied with all its vigor and rigor as prescribed by the Statute. One cannot escape the consequences of the provisions of the 'Law of Limitation' which provide that for the extension of the period of limitation in a given case, the condition precedent is that the applicants have to satisfy the Court that they have carved out a sufficient cause in seeking the

indulgence of the Court for not preferring the appeal or application within the stipulated time. The Courts cannot come to the aid and rescue of the litigant where the application for condonation of delay does not spell out sufficient cause and the approach of the litigant, in making such application, is casual and cryptic.

4. Law on the subject is no more *res integra*. The Hon'ble Supreme Court, in case reported as "(2013) 12 SCC 649", while dealing with the issue of condonation of delay, has observed as under:

"..... 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.

21.9. (ix) The conduct, behavior 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.

.....

21.12. (xii) The entire gamut of facts are to be carefully scrutinized 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.

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring 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.

.....

31. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice."

5. Resort can, in this behalf, be also had to a lucid and elaborate Judgment delivered by this Court on the subject of condonation of delay reported as '2010 (4) JKL 638 (HC)', whereby it has been held as under:

"7. In the case *P.K. Ramachandran v. State of Kerala*, reported in AIR 1998 SC 2276, the Apex Court, at paragraph 6 ruled as under:

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."

Applying the ratio of the law laid down above to the instant case, there has been a reckless delay of 2051 days in filing the appeal and no satisfactory explanation has come forward on that count except for routine words and phrases. No doubt, a liberal approach has to be adopted in the matter of condonation of delay when there is no gross negligence or deliberate inaction or lack of bonafides on the part of the litigant, but, in the instant case, the applicants/ appellants took their own time to formulate an opinion that the appeal has to be filed. It has, nowhere, been stated that they were, at all, prevented earlier to take such a decision. The applicants/ appellants have been negligent in prosecuting their claim within time and the explanation offered for the delay in filing the appeal is neither plausible nor reasonable. The application appears to have been drafted recklessly without giving a proper account of the dates and details of the grounds agitated in it and recourse has been had to the leisure and pleasure in moving the application.

6. In the above background, we are of the considered opinion that the applicants/ appellants have failed to explain the huge delay of 2051 days in filing the appeal. That being so, the instant application for condonation of delay, in filing the appeal, is rejected and, as a corollary thereto, the Letters Patent Appeal (LPA), registered as LPA No.180/2021 along with CM No.8363/2021, shall also stand dismissed as barred by time.