

(2005) 01 BOM CK 0023

In the Bombay High Court

Case No : Civil Application No's. 6984, 6985 and 6986 of 2004 in Second Appeal No. 175 of 1991

Jema Hira and Others

APPELLANT

Vs

Nandu Raoji Rathod (deceased through LRs.)

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2005) 2 ALLMR 495 : (2005) 4 BomCR 847

Hon'ble Judges : Zoting D.S., J

Bench : Single Bench

Advocate : S.L. Kulkarni, for the Appellant; A.S. Bajaj, for the Respondent

Final Decision : Allowed

Judgement

Zoting D.S., J.—Heard Shri S.L. Kulkarni, Advocate for the applicants and Shri A.S. Bajaj, Advocate for the respondents.

2. These are the three applications filed by the original appellants in Second Appeal No. 175 of 1991. During pendency of the second appeal, Nandu Raoji Rathod the respondent in Second Appeal No. 175 of 1991 is reported dead. He died on 30th July, 1997. The learned Counsel for the respondent Nandu Raoji Rathod filed pursis on 2nd September, 1997 in the second appeal informing the Court that the respondent died on 30th July, 1997. This act was noted by the learned Counsel for the appellants on the very day. However, no steps were taken by the appellants for bringing the legal representatives of deceased respondent on record. The above referred three applications have been filed by the original appellants requesting therein to condone the delay in filing the application for setting aside the abatement and for bringing the legal representatives on record. The applications are opposed by the respondents by filing reply.

3. The learned Counsel for the respondents submits that knowing well that the

respondent died, the legal representatives of the respondent are not brought on record, within the stipulated period and as such, the delay caused by the appellants is deliberate and intentional and as such, the delay does not deserve to be condoned and the applications for setting aside the abatement and bringing the legal representatives on record, deserve to be rejected. The respondent Asaram, who is the son of deceased Nandu Rathod, has filed his affidavit in reply while opposing the applications. The learned Counsel for the respondents, while opposing the applications, replying on the decision of the Supreme Court in the case of P.K. Ramachandran Vs. State of Kerala and Another, , submits that as the delay is caused deliberately, it does not deserve to be condoned.

4. As against this, Mr. Kulkarni, learned Counsel for the appellants submits that there is no inordinate delay in filing the application for condonation of delay and setting aside the abatement. He points out that the said delay is not intentional or deliberate as according to him, the appellant was not going to get an benefit on account of such delay. He further submits that the appellants reside in village and they are the illiterate persons. He further submits that the appellant No. 7 Sitaram has been looking after the legal proceedings in respect of the disputed property. However, he had met with an accident and he was under treatment for the fracture sustained by him and as such, he did not have contact with the Advocate dealing with the matter and the communication sent by the Advocate was not received by him. In the application, it is also stated that the messages which were sent to the Advocate at Jalna by the Advocate dealing with the second appeal, though were received could not be communicated as Sitaram did not meet the Advocate either at Jalna or at Aurangabad. He further submits that the appellants have no source of income and valuable rights in immovable property are involved in the matter. Under such circumstances, the delay caused in filing the application for condonation of delay and setting aside the abatement may be condoned. It is to be noted that in the matter of condonation of delay, the matter of condonation of delay, the approach of the Court should be pragmatic and not pedantic. Whether good and sufficient ground for condonation of delay is made out or not depends upon the facts and circumstances of the individual case.

5. In this regard, the law is well settled and if any authority is needed in this regard, it is to be found in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . In this case, the Supreme Court has laid down the guidelines which are as under:

"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 merit 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 legalize injustice on technical grounds but because it is capable to removing injustice and is expected to do so."
6. The above guidelines are followed by this Court in the case of Sonerao Sadashivrao Patil and Anr. v. Godawaribai w/o Laxmansingh Gahirewar, 2000 (1) B.C.R. 111 : 1999 (2) M.L.J. 272 : 1999 (2) All.M.R. 507.
7. Thus, the primary function of a Court is to adjudicate the dispute between the contesting parties and to advance substantial justice. It is to be borne in mind that the rules of limitation are not made to harm the valuable rights of the parties. Reference with profit can also be made to the case of N. Balakrishnan Vs. M. Krishnamurthy, . The Supreme Court has observed that the Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics. The Supreme Court has further observed that Section 5 of the Limitation Act does not say that the discretion given to the Court can be exercised only if delay is within a certain limit. Length of delay is not the matter, acceptability of explanation is the only criterion.
8. Applying the above principles laid down by the Supreme Court, I find that the explanation given by the appellant as regards the delay in filing the applications for condonation of delay and for setting aside the abatement, needs to be accepted in the interest of justice. The delay be condoned on payment of costs of Rs. 1,500/- payable to the respondents. The costs to be deposited within a

period of two weeks. On depositing the said costs, abatement of the appeal shall stand set aside and the legal representatives of the respondents be brought on record.

9. Civil applications are disposed of accordingly.