

(1997) 08 AHC CK 0036
In the Allahabad High Court
Case No : Writ Petition No. 1144 (M/S) of 1981

Jokhu Ram Verma

APPELLANT

Vs

District Judge, Faizabad and others

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (1998) 1 AWC 297 : (1998) 1 CivCC 712

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : P.L. Misra and Dilip Kumar Tandon, for the Appellant; C.S.C., for the Respondent

Judgement

R.H. Zaidi, J.—By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuing a writ, order or direction in the nature of certiorari for quashing judgment and order dated 15.12.97 passed by the District Judge, Faizabad and judgment and decree dated 19.10.78, passed by the learned Additional Munsif, Akbarpur, District Faizabad.

2. It appears that the Suit No. 239 of 1975 filed by the petitioner for permanent injunction was dismissed by the Additional Munsif, Akbarpur, District Faizabad on 19.10.78.

3. Aggrieved by the judgment and decree passed by the trial court, petitioner preferred a belated appeal on 1.1.79 along with an application u/s 5 of the Indian Limitation Act which was supported by an affidavit, for condonation the delay in filing the appeal. However, by judgment and order dated 15.12.79, District Judge, Faizabad dismissed the application filed u/s 5 of the Indian Limitation Act and also rejected memo of appeal.

4. Learned counsel for the petitioner has submitted that the delay in filing the appeal was fully explained and sufficient cause was shown for condonation of

delay that the facts stated in the said application and affidavit were also supported by the documentary evidence. No counter-affidavit was filed by the respondents to controvert the facts stated in the affidavit filed by the petitioner along with application for condonation of delay, therefore. District Judge should have relied upon the affidavit filed by the petitioner.

5. On the other hand, learned standing counsel supported the validity of the judgment and order passed by the court below. It was urged that the court below was right in dismissing the application filed by the petitioner for condonation of delay in filing the appeal and cogent reasons were recorded by him for the same. I have considered the submissions made by the learned counsel for the parties and also perused the record.

6. Considering the facts stated in the affidavit filed in support of an application for condonation of delay, in my opinion, no negligence, inaction or want of bona fides could be attributed to the petitioner and the delay in filing the appeal was sufficiently explained. It is well-settled law that "sufficient cause" should receive liberal construction so as to advance substantial justice when no negligence, inaction or want of bona fides is imputable to the applicant. Reference in this regard, can be made to the decisions in the cases of Shakuntala Devi Jain Vs. Kuntal Kumari and Others, and Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another,

7. View taken by the District Judge to the contrary is apparently erroneous and incorrect. He was not right in holding that there is nothing on record to explain non-filing the appeal between 17.12.78 and 24.12.78, particularly when in paragraph 5 of the affidavit it filed in support of an application for condonation of delay, it was stated as under ;

"Unfortunately, the petitioner's illness relapsed on 6.12.78 and he was again confined to bed till 26.12.78 and had to undergo medical treatment again from 6.12.78 (vide the medical certificate enclosed)."

8. Admittedly, no counter-affidavit was filed on behalf of contesting respondents in controverting the facts stated in the aforesaid affidavit. In these circumstances, it was not open to the District Judge, to disbelieve the facts stated in the said affidavit. He had no option but to rely upon the facts stated in the said affidavit, particularly when the said facts were also supported by the documentary evidence (medical certificate).

9. Court below, in my opinion, was not right in rejecting the application for condonation of delay which resulted into the dismissal of the appeal, judgment and order passed by the court below is, therefore, liable to be quashed.

10. Writ petition succeeds and is allowed with costs. Order dated 15.12.79, passed by the District Judge, Faizabad is hereby quashed.

11. District Judge, Faizabad is directed to restore the appeal to its original number and to decide the same on merits.