

(2009) 12 J&K CK 0023
In the Jammu And Kashmir High Court

Jyoti Pvt. Ltd. and Others

APPELLANT

Vs

Ali Shah and Others

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Section 5

Citation : AIR 2010 J&K 97 : (2011) 1 JKJ 558

Hon'ble Judges : Gh. Hasnain Massodi, J

Bench : Single Bench

Judgement

Gh. Hasnain Massodi, J.—The applicants/petitioners seek condonation of delay in filing civil revision to call in question order of learned 3rd

Additional District Judge, Srinagar dated 7th of February, 2009 in civil suit titled Ali Shah and Ors. v. Jyoti Pvt. Ltd. and Ors. file No. 29/Numbri

whereby learned trial Judge had decided preliminary issues (issues 5 to 9) in favour of the plaintiff/non-applicant and against the

defendants/applicants. The delay in filing civil revision is sought to be condoned on the ground that the applicants have engaged a counsel from

Jammu and the counsel for the applicants had to proceed from Jammu to Srinagar to collect the certified copy of the order sought to be impugned

and thereafter draft the revision petition and sent it for signatures of the applicant No. 1 to Delhi. It is averred that the applicant No. 1 is

Chairperson of Bharat Hotels and due to heavy work schedule the applicant No. 1 could not go through the draft of revision petition in time and it

was only after her return in 2nd week of May, 2009 that the revision petition was signed. It is pleaded that though duly signed revision petition was

dispatched to counsel at Jammu yet due to mistake committed by office clerk of the counsel, the petition got misplaced and was traced only on

20th of May, 2009. It is pleaded that after the petition was traced and application for condonation of delay was drafted and got signed by the

applicant No. 4. The delay in filing the revision petition is said to be attributable to the mishandling of the revision petition is said to be attributable

to the mishandling of the revision petition after it is received from New Delhi, in the office of counsel for the applicants. It is insisted that the

applicants have an excellent case on merits and that the case sought to be set up in the revision petition because of its merit deserves examination

by the Court and for this reason alone the revision petition does not warrant to be thrown out on mere technicalities. It is averred that the delay in

filing the revision petition is neither intentional nor deliberate and that delay has been occasioned by unavoidable circumstances.

2. The condonation of delay application is opposed on the grounds that the averments made in the application are frivolous and vexatious and that

the applicants have failed to give the details of the events in the application that put together, according to the non-applicants does not constitute a

sufficient cause"" to prevent the applicants from filing revision petition within the prescribed time. The grounds urged in the application according to

the non-applicants are nothing but lame excuses not countenanced by law. The non-applicant No. 4 has sworn affidavit in support of the

application.

3. Learned Counsel for the applicants insists that there was only 16 days delay to be condoned and that the applicants have convincingly explained

the delay in filing the revision petition on the strength of grounds spelt out in the condonation of delay application. It is argued by learned Counsel

for applicants that the grounds for condonation detailed in the application are cogent and convincing and enable the applicants to make out

sufficient cause"" within the meaning of Section 5 of the J. & K. Limitation Act and that the application merits to be accepted. Learned Counsel for

applicants referring to case law on the subject argues that the expression ""sufficient cause"" is to receive liberal construction and that a case which is

otherwise meritorious and genuine is not to be thrown out on technicalities. Learned Counsel for the applicants to buttress his argument in particular

has placed reliance on law laid down in State of Nagaland Vs. Lipok AO and Others, . It is argued that the applicants are not required to explain

every days delay and all that is expected from the applicants is to convince the Court that the delay was not deliberate or willful and actuated by

mala fide intentions. Pointed reference has been made to following observations of Supreme Court in the aforementioned case:

The proof by sufficient cause is a condition precedent for exercise of extraordinary discretion vested in the Court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion...

The expression ""sufficient cause"" should therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every days delay.

4. Learned Counsel for the non-applicants on the other hand reiterating the stand taken in the objections insists that the grounds pleaded in the

application are cryptic, bereft of necessary details and thus liable to outright rejection. It is insisted that the application cannot succeed on vague

averments like ""heavy schedule of petitioner""; ""petitioner's return to Delhi""; ""Inability to go through the contents of the revision petition"";

misplacement of revision petition in the office of counsel for the applicants"" and like. It is argued that the applicants though claiming that the

revision petition was sent for signatures of the applicant No. 1 have not given the exact date when the petition was sent to Delhi nor details about

the engagements of the petitioner No. 1 which kept her busy and gave her no time to look into the revision petition. It is pointed out that though the

applicant No. 1 is said to have been away yet it is nowhere disclosed where the applicant No. 1 was, when the applicant No. 1 had left Delhi and

for which destination or when the applicant No. 1 returned to Delhi. It is insisted that an application for condonation of delay in approaching the

Court is not a idle formality and the applicants have to plead and establish a case for condoning delay by showing sufficient cause within the

meaning of Section 5 of J. & K. Limitation Act. It is further pleaded that the applicant in an application for condonation of delay has not only to

explain the period by which the revision petition sought to be instituted is delayed but the explanation has to come from the applicants giving

explanation right from the day first when the cause accrued to the applicants to file the revision petition. It is argued that in the present case the

applicants have to explain the reason for not approaching the Court with the revision petition, from 8th of February 2009 when the cause to file

revision petition accrued and not from 8th of May, 2009 when the period prescribed came to an end. Learned Counsel for non-applicants to lend

support to his arguments seeks to draw support from law laid down in following reported cases:

2001 SLJ 331; 2001 SLJ 364; 2001 SLJ 445; 2002 SLJ 3; 2002 SLJ 260; 2008 SLJ 294.

5. Learned Counsel for non-applicants has disputed that delay in filing the revision petition was only 16 days as projected by the counsel for the

applicants and insisted that there was a delay of 37 days and that whole period had gone unexplained.

6. The baseline in the matters relating to condonation of delay is that the rules of limitation are not punitive in character or meant to destroy the

rights of the parties and that delay in approaching the Court within prescribed time must be condoned, if the explanation offered is plausible and

convincing and further surrounding circumstances are not indicative of the delay being part of dilatory tactics or the person asking for delay being

guilty of gross negligence. In AIR 1998 SC 242 in case titled N. Balakrishnan v. M. Krishnamurthy, the Supreme Court observed:

A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in

approaching the Court is always deliberate. This Court has held the words ""sufficient cause"" u/s 5 of the Limitation Act should receive a liberal

construction so as to advance substantial justice. 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...

7. From perusal of the application, it transpires that the applicants have sufficiently explained the reasons that prevented the applicants from filing

the revision petition within the time prescribed under law. The grounds urged in the application are, engagement of a counsel from Jammu to

appear and contest the suit on behalf of the applicants at Srinagar and the time consumed in obtaining the certified copy of the impugned order, the

place of business of the applicant No. 1 and her engagements as head of corporation, the mishandling of the revision petition in the office of the counsel attributed to the clerk of the counsel and thereafter time consumed in drafting the condonation of delay application. The grounds urged in the application are not sketchy and vague as is tried to be made out by the counsel for the non-applicants. True that the applicants have not given the minute details regarding the events that prevented the applicants from filing the revision petition within prescribed time but the events do not lack in fundamental and essential details as would render the grounds urged bereft of substance. The chain of events set out in the application sounds convincing. It is correct that the issue relevant before the Court is one of the sufficiency of cause and not period of delay. However shorter the period of delay, easier it is for the applicant seeking condonation of delay to establish "sufficient cause" that has kept away the applicant from the Court. In the present case the delay in filing revision petition is only of a period of 16 days and the applicants have convincingly explained delay right from the day right to file revision petition accrued to the applicants. Pertinent to mention that record substantiates the contention that petition was presented on 25-5-2009 and returned to remove the defect.

8. Having regard to the grounds urged in the application for condonation of delay and the questions sought to be raised before the Court. I am satisfied that the applicants have made out a case for condonation of delay in filing the revision petition. The application is accordingly allowed and the delay is condoned. The civil revision be registered. At the request of learned Counsel for the petitioner list the Civil Revision on 1st of January, 2010.

Disposed of.