
(2008) 09 AHC CK 0090
In the Allahabad High Court

Maithili Sharan Dixit

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2008) 4 AWC 3648 : (2008) 105 RD 462

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Sri Sudama Ji Shandilya, learned Counsel for the petitioner, Sri Pramod Kumar Sharma, learned Counsel appears on behalf of respondent Nos. 5 to 8 and learned standing Counsel appears on behalf of respondent Nos. 1 to 3.

2. By means of the present writ petition, petitioner is challenging the order dated 13.8.2002, passed by Board of Revenue, U.P. at Allahabad, by which the revision of the petitioner has been dismissed.

3. Brief facts giving rise to present writ petition are that in the suit, order was passed by Assistant Collector, Orai on 30.7.1998. The decree in respect thereof was issued on 6.11.1998. Against the order of the Assistant Collector, petitioner filed appeal on 4.1.1999 before Commissioner Jhansi Division, Jhansi alongwith the application u/s 5 of the Limitation Act for the condonation of delay. The aforesaid application was rejected vide order dated 22.11.1999. Against the order of the Commissioner, Jhansi Division, Jhansi dated 22.11.1999, petitioner filed revision before Board of Revenue, which has been dismissed by the impugned order. Member, Board of Revenue has dismissed the appeal on the ground that from the date of decree, i.e., 6,11.1998, the petitioner could not file the appeal within time. It has also been observed that the petitioner has moved the application for getting the copy of the decree late. It is further observed that

no request has been made in writing for the condonation of delay. Commissioner has rejected the application for the condonation of delay on the ground that the order of the court below was passed on 30.7.1998 and the petitioner has moved the application on 15.10.1998 for obtaining the decree, which was let on 6.11.1998. The limitation for filing the appeal is thirty days but even after the preparation of the decree, the appeal was not filed within the stipulated time.

4. Learned Counsel for the petitioner submitted that the petitioner has filed the application for condonation of delay u/s 5 of the Limitation Act, Annexure-4 to the writ petition. There is nothing in the order of the Commissioner that the application u/s 5 of the Limitation Act has not been filed. He submitted that in the application u/s 5 of the Limitation Act petitioner has explained the delay. The delay was caused for the reasons that Sri Chandra Shekhar Sharma, advocate after getting the decree could not inform to the petitioner and when the petitioner had gone to meet him on the occasion of new year, he was told about the decree and, thereafter, the appeal was prepared and the same was filed. He further submitted that there was no deliberate default on the part of the petitioner and the petitioner acted bona fide.

5. Learned Counsel appearing on behalf of the respondent Nos. 5 to 8 supported the order of the authorities below.

6. Having heard learned Counsel for the parties, I have perused the impugned order. In my opinion, order of the Board of Revenue and the order of Commissioner, Jhansi Division, Jhansi are not sustainable. The application u/s 5 of the Limitation Act, Annexure-4 to the writ petition which is not in dispute. Commissioner has not disputed the filing of the application u/s 5 of the Limitation Act. The delay in filing the appeal is about one month.

7. In my view, reasons given for the delay is sufficient cause and the delay is liable to be condoned. In the matter of condonation of delay Apex Court has consistently held that pragmatic view should be taken.

8. In the case of Collector, Land Acquisition v. Mst. Katiji and Ors. 1987 (13) ALR 306 : 1987 (1) AWC 675 (SC) , Hon"ble Supreme Court held as follows:

The Legislature has conferred the power to condone delay by enacting Section 5 of the 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 of 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 realized 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 and pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, the 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 grappled that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

9. In *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 133 : 1999 (1) AWC 15 (SC) , the Apex Court explained the scope of limitation and condonation of delay, observing as under:

The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy.

10. In *Shankarrao Vs. Chandrasenkunwar*, the Supreme Court took the view that the Court should not adopt an injustice-oriented approach. In rejecting the application for condonation of delay.

11. In *Vedabai alias Vijayanatabai Baburao Patil v. Shantaram Baburao Patil and Ors.* 2001 (44) ALR 577 : 2001 (3) AWC 2353 (SC), the Apex Court made a distinction in delay and Inordinate delay observing as under:

In exercising discretion u/s 5 of the Limitation Act, the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other will be a relevant factor so the case calls for a more cautious approach....

12. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, , Honble Supreme Court held that discretion given by Section 5 should not be defined or

crystallized so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction.

13. In *Brij Inder Singh v. Kanshi Ram* AIR 1917 PC 156, it was observed that true guide for a Court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.

14. In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, , the Hon''ble Supreme Court held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

15. In *O.P. Kathpalia Vs. Lakshmi Singh (Dead) and Others*, , the Hon''ble Supreme Court held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

16. In *State of Haryana Vs. Chandra Mani and others*, Hon''ble Supreme Court considered large number of its earlier judgments including *Binod Bihari Singh Vs. Union of India*, ; *M/s. Shakambari and Co. Vs. Union of India*, *Warlu Vs. Gangotribai* and another, *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, *Mata Din Vs. A. Narayanan*, and held that expression "each day"s delay must be explained", does not mean that a pedantic approach should be made and it must be applied in a rational common sense pragmatic manner.

17. In view of the above, writ petition is allowed.

18. The impugned order passed by Member, Board of Revenue dated 13.8.2002 and the order of Commissioner, Jhansi dated 22.11.1999 are set aside and the matter is remanded back to the Commissioner, Jhansi Division, Jhansi to decide the Appeal No. 20 of 1998-99 on merit afresh after giving opportunity of hearing to the petitioner and all concerned parties strictly in accordance to the law.

19. Learned Counsel for the petitioner is directed to file the certified copy of the order within a period of two weeks and the Commissioner Jhansi Division, Jhansi is directed to decide the appeal within a period of two months thereafter.