
(2013) 11 SC CK 0076

In the Supreme Court Of India

Case No : Civil Appeal No. 10581 of 2013 (Arising of SLP (C) No. 23918 of 2012)

Manoharan

APPELLANT

Vs

Sivarajan and Others

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149
Constitution of India, 1950 — Article 21, 39A
Legal Services Authorities Act, 1987 — Section 12, 24A(2)
Limitation Act, 1963 — Section 5

Citation : (2014) 1 AD 387 : (2014) 102 ALR 228 : (2014) 2 ALT 6 : (2014) 1 AWC 902 : (2013) 4 BC 679 : (2014) 1 BomCR 121 : (2013) 6 CTC 765 : (2014) 1 JLJR 571 : (2013) 15 JT 136 : (2013) 4 KHC 693 : (2013) 4 KLT 828 : (2014) 1 LW 83 : (2014) 5 MhLj 3 : (2014) 2 P

Hon'ble Judges : V. Gopala Gowda, J;Sudhansu Jyoti Mukhopadhyaya, J

Bench : Division Bench

Advocate : Vijay Kumar, for the Appellant; B V Deepak, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—Leave granted.

2. This appeal is filed by the Appellant questioning the correctness of the judgment and final Order dated 21.03.2012 passed by the High Court of Kerala at Ernakulam in RFA No. 678 of 2011 urging various facts and legal contentions in justification of his claim.

3. Necessary relevant facts are stated hereunder to appreciate the case of the Appellant and also to find out whether the Appellant is entitled for the relief as prayed in this appeal.

The Appellant approached the Respondent No. 1 -a money lender, for a loan of Rs. 2,20,000/-. The Respondent No. 1 agreed to give him the loan in return of execution of a sale deed with respect to 3 cents of land in re-survey No. 111/13-1 in Block No. 12 of Maranalloor village by the Appellant in his favour. It

was agreed upon between the parties that the Respondent No. 1 will reconvey the property in favour of the Appellant on repayment of the loan. The Appellant accordingly executed sale deed No. 575 of 2001 at sub Registrar's office at Ooruttambalam with respect to 3 cents of land in Re-survey No. 111/13-1 in Block No. 12 of Maranalloor village in favour of Respondent No. 1. The Respondent No. 1 executed an agreement of re-conveyance deed in favour of the Appellant regarding the above mentioned property on the same day.

4. The learned senior Counsel, Mr. Basanth R. appearing on behalf of the Appellant argued that the Appellant approached the Respondent No. 1 several times with money for re-conveying the property in favour of the Appellant as was agreed upon between them but the Respondent No. 1 evaded from doing so.

5. It is also the case of the Appellant that Respondent No. 1, instead of issuing a deed of re-conveyance, sold the property to Respondent Nos. 2 and 3 without the knowledge of the Appellant. The Appellant sent a legal notice to the Respondent No. 1 requesting him to appear before the sub Registrar's office for the execution of re-conveyance deed regarding the plaint schedule property to which the Respondent No. 1 did not oblige. The Appellant then filed a suit being OS No. 141/2007 before the Court of sub Judge, Neyyattinkara for mandatory injunction, for declaration of the sale deed executed by Respondent No. 1 in favour of Respondent Nos. 2 and 3 as null and void, for execution of re-conveyance deed in his favour and also for consequential reliefs. The suit was valued at Rs. 3,03,967/- and the court fee was valued at Rs. 28,797/-. The Appellant paid 1/10th of the court fee i.e., Rs. 2880/- at the time of filing the suit. The Court of sub Judge, Neyyattinkara granted injunction in favour of the Appellant restraining the Respondents from carrying out new construction activities including the parts of the plaint schedule property until further orders.

6. The court of sub Judge, Neyyattinkara heard the application for extension of time sought by the Appellant for paying the balance court fee. However, the application was rejected and the file was closed by the learned sub Judge. The Appellant then filed Regular First Appeal No. 678 of 2011 along with an application for condonation of delay in filing the appeal. The High Court dismissed the application for condonation of delay on the ground that the delay in filing the appeal was not explained by the Appellant and consequently, dismissed the Regular First Appeal filed by the Appellant. The High Court's opinion that the Appellant has not given any ground for delay in filing the Regular First Appeal is not sustainable since the Appellant has categorically claimed that he was not aware of the rejection of the suit of the Appellant for delayed payment of court fee by the learned sub Judge.

7. In the light of the facts and circumstances of the case, the following points would arise for our consideration:

1. Whether the learned sub Judge was justified in rejecting the suit for non-payment of court fee?

2. Was the Appellant entitled to condonation of delay for non- payment of court fee by the learned sub Judge?

3. Whether the High Court was right in rejecting the application for condonation of delay filed by the Appellant against the decision of the learned sub judge who rejected the suit of the Appellant for non-payment of court fee?

4. What Order?

Answer to Point No. 1

8. Section 149 of the CPC prescribes a discretionary power which empowers the Court to allow a party to make up the deficiency of court fee payable on plaint, appeals, applications, review of judgment etc. This Section also empowers the Court to retrospectively validate insufficiency of stamp duties etc. It is also a usual practice that the Court provides an opportunity to the party to pay court fee within a stipulated time on failure of which the Court dismisses the appeal. In the present case, the Appellant filed an application for extension of time for remitting the balance court fee which was rejected by the learned sub Judge. It is the claim of the Appellant that he was unable to pay the requisite amount of court fee due to financial difficulties. It is the usual practice of the court to use this discretion in favour of the litigating parties unless there are manifest grounds of mala fide. The Court, while extending the time for or exempting from the payment of court fee, must ensure bona fide of such discretionary power. Concealment of material fact while filing application for extension of date for payment of court fee can be a ground for dismissal. However, in the present case, no opportunity was given by the learned sub Judge for payment of court fee by the Appellant which he was unable to pay due to financial constraints. Hence, the decision of the learned sub Judge is wrong and is liable to be set aside and accordingly set aside.

Answer to Point No. 2

9. In the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, it was held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing the cases on merit. The relevant paragraphs of the case read as under:

11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, held that the expression 'sufficient cause' employed by the legislature in the Limitation Act 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 was further observed that 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 merits 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 of removing injustice and is expected to do so.

XXX XXX XXX

12. After referring to the various judgments reported in *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra*, *Adult*, 22 CWN 169 (Privy Council) *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, , *Mata Din Vs. A. Narayanan*, *State of Kerala v. E.K. Kuriyipe and Ors. Milavi Devi v. Dina Nath*, (1982) 3 SCC 366 *O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others*, *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, *Smt. Prabha v. Ramprakash Kalara* [, (1987) Supp SCC 339), *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, , *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, , *Binod Bihari Singh Vs. Union of India*, , *M/s. Shakambari and Co. Vs. Union of India*, , *Rama Kishen v. U.P.S.R.T.C. and Warlu Vs. Gangotribai and another*, this Court in *State of Haryana Vs. Chandra Mani and others*, held;

...The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach injustice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are

involved for decision by the Courts or whether cases require adjustment and should authorize the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

To the same effect is the judgment of this Court in *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*,

13. In *Nand Kishore Vs. State of Punjab*, this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In *N. Balakrishnan Vs. M. Krishnamurthy*, this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes 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. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. In this context it was observed in *N. Balakrishnan Vs. M. Krishnamurthy*,

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10. In the case in hand, it is clear from the evidence on record that the Appellant could not pay court fee due to financial difficulty because of which his suit got rejected. It is also pertinent to note that the Appellant had moved the Court claiming his substantive right to his property. The Appellant faced with the situation like this, did not deserve the dismissal of the original suit by the Court

for non-payment of court fee. He rather deserved more compassionate attention from the Court of sub Judge in the light of the directive principle laid down in Article 39A of the Constitution of India which is equally applicable to district judiciary. It is the duty of the courts to see that justice is meted out to people irrespective of their socio economic and cultural rights or gender identity.

11. Further, Section 12(h) of the Legal Services Authorities Act, 1987 provides that every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court

Further, Section 12 of the Kerala State Legal Services Authorities Rules, 1998 states that:

12. Any person whose annual income from all sources does not exceed Rupees Twelve Thousand shall be entitled to legal services under Clause (h) of Section 12 of the Act.

Therefore, subject to the submission of an affidavit of his income, the court fee of the Appellant could have been waived or provided by the District Legal Services Authority, instead of rejection of the suit.

12. Further, in the case of State of Maharashtra Vs. Manubhai Pragaji Vashi and others, it has been held that:

17. ... we have to consider the combined effect of Article 21 and Article 39A of the Constitution of India. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The preamble to the Constitution of India assures 'justice, social, economic and political'. Article 39A of the Constitution provides 'equal justice' and 'free legal aid'. The State shall secure that the operation of the legal system promotes justice. It means justice according to law. In a democratic polity, governed by rule of law, it should be the main concern of the State, to have a proper legal system. Article 39A mandates that the State shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The principles contained in Article 39A are fundamental and cast a duty on the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way-by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. The crucial words are (the obligation of the State) to provide free legal aid 'by suitable legislation or by schemes' of 'in any other way', so that opportunities for securing justice are not

denied to any citizen by reason of economic or other disabilities. (Emphasis supplied)....

13. Further, Article 39A of the Constitution of India provides for holistic approach in imparting justice to the litigating parties. It not only includes providing free legal aid via appointment of counsel for the litigants, but also includes ensuring that justice is not denied to litigating parties due to financial difficulties. Therefore, in the light of the legal principle laid down by this Court, the Appellant deserved waiver of court fee so that he could contest his claim on merit which involved his substantive right. The Court of sub Judge erred in rejecting the case of the Appellant due to non-payment of court fee. Hence, we set aside the findings and the decision of the Court of sub Judge and condone the delay of the Appellant in non-payment of court fee which resulted in rejection of his suit.

Answer to Point No. 3

14. Having answered Point Nos. 1 and 2 in favour of the Appellant, we are inclined to answer point No. 3 as well in his favour.

In the case of Muneesh Devi Vs. U.P. Power Corporation Ltd. and Others, it was held as under:

15. In the application filed by her for condonation of delay, the Appellant made copious references to the civil suit, the writ petition and the SLP filed by her and the fact that the complaint filed by her was admitted after considering the issue of limitation. She also pleaded that the cause for claiming compensation was continuing. The National Commission completely ignored the fact that the Appellant is not well educated and she had throughout relied upon the legal advice tendered to her. She first filed civil suit which, as mentioned above, was dismissed due to non payment of deficient court fees. She then filed writ petition before the High Court and SLP before this Court for issue of a mandamus to the Respondents to pay the amount of compensation, but did not succeed. It can reasonably be presumed that substantial time was consumed in availing these remedies. It was neither the pleaded case of Respondent No. 1 nor any material was produced before the National Commission to show that in pursuing remedies before the judicial forums, the Appellant had not acted bona fide. Therefore, it was an eminently fit case for exercise of power u/s 24A(2) of the Act. Unfortunately, the National Commission rejected the Appellant's prayer for condonation of delay on a totally flimsy ground that she had not been able to substantiate the assertion about her having made representation to the Respondents for grant of compensation.

15. In the case in hand, the High Court, vide its impugned judgment dated 21.03.2012 held that the Appellant has not provided sufficient grounds for delay in filing the appeal. This decision of the High Court is unsustainable in law. The Appellant has categorically stated that he went to his advocate's office at Neyyattinkara on 24.05.2011 to enquire about the status of the suit. His advocate informed him that the learned sub Judge has rejected the suit on

11.8.2008 for non-payment of balance court fee. The advocate claimed that he has informed the same to the Appellant through a postal card but the Appellant claims that the same has not reached him and he was under the impression that his application for extension of time for payment of court fee will be allowed by the learned sub Judge. He further claimed that he had applied for procurement of the certified copy of the decision of the learned sub Judge on the same day.

16. The learned senior Counsel Mr. K.P. Kylasantha Pillay, appearing on behalf of the Respondents alleged that the appeal of the Appellant before this Court is based on wrong and frivolous grounds. The material produced by them in support of their contention is totally based on the merit of the case. Since, we are not deciding the merit of the case, the material produced by the Respondents in support of their contention becomes irrelevant. We have condoned the delay in paying the court fee by the Appellant while answering point Nos. 1 and 2. We see no reason in rejecting the application filed by the Appellant for condonation of delay in filing the appeal before the High Court as well.

17. In view of the aforesaid reasons, the impugned judgment passed by the High Court is not sustainable and is liable to be set aside as per the principle laid down by this Court in as much the High Court erred in rejecting the application for condonation of delay filed by the Appellant. We accordingly, condone the delay in filing the appeal in the High Court as well.

Answer to Point No. 4

18. In view of the reasons assigned while answering point Nos. 1, 2 and 3 in favour of the Appellant, the impugned judgment passed by the High Court is set aside and the application filed by the Appellant for condonation of delay is allowed. Therefore, we allow the appeal by setting aside the judgments and decree of both the trial court and the High Court and remand the case back to the trial court for payment of court fee within 8 weeks. If for any reason, it is not possible for the Appellant to pay the court fee, in such event, he is at liberty to approach the jurisdictional district legal service authority and Taluk Legal Services Committee seeking for grant of legal aid for sanction of court fee amount payable on the suit before the trial court. If such application is filed, the same shall be considered by such committee and the same shall be facilitated to the Appellant to get the right of the Appellant adjudicated by the trial court by securing equal justice as provided under Article 39A of the Constitution of India read with the provision of Section 12(h) of the Legal Services Authorities Act read with Regulation of Kerala State. We further direct the trial court to adjudicate on the rights of the parties on merit and dispose of the matter as expeditiously as possible.

19. The appeal is allowed in terms of the observations and directions given as above to the trial court. There will be no order as to costs.