

(2021) 05 DEL CK 0080

In the Delhi High Court

Case No : Civil Writ Petition No. 1441 Of 2021, Civil Miscellaneous No. 4128 Of 2021

M/S Dewan Chand Through Its Partner Vikram Kumar

APPELLANT

Vs

Central Board Trustees Through Its Secretary & Ors

RESPONDENT

Date of Decision : 07-05-2021

Acts Referred:

Employees Provident Fund & Miscellaneous Provisions Act, 1952 — Section 7A
Limitation Act, 1963 — Section 5

Citation : (2021) 05 DEL CK 0080

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Tejpal Singh Kang, Braja Bandhu Pradhan

Final Decision : Allowed

Judgement

Jyoti Singh, J

1. Present petition has been filed assailing the order dated 19.11.2020 whereby the applications filed by the Petitioner for restoration of the appeal and

condonation of delay in filing the restoration application have been dismissed.

2. Petitioner is a partnership firm with two partners. An Assessment Order was passed by Assistant Provident Fund Commissioner, Faridabad under

Section 7(A) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "the Act") on 29.11.2012

assessing Rs.6,55,380/- allegedly payable by the Petitioner establishment. The said order was challenged by the Petitioner by an appeal before the

Employees Provident Fund Appellate Tribunal (now Central Government Industrial Tribunal), Delhi, in the year 2013, being ATA No. 184(16) 2013.

Appeal was admitted on 19.03.2013, subject to deposit of 25% of the assessed

amount.

3. The appeal was dismissed in default on 10.05.2016 due to non-appearance of the Petitioner, but was restored on 06.06.2016. Yet again, when the appeal was listed on 14.12.2016, there was no appearance on behalf of the Petitioner and the CGIT dismissed the appeal in default. After a lapse of nearly 3 years, Petitioner filed an application for restoration of the appeal along with an application for condonation of delay. However, the CGIT vide order dated 19.11.2020 dismissed both the applications on the ground that several adjournments had been allowed to the Petitioner for hearing and even on earlier occasion i.e. on 10.05.2016, the appeal was dismissed in default, indicating lack of diligence on the part of the Petitioner in the conduct of the appeal. CGIT was of the view that the explanation for non-appearance and condonation of delay mentioned in the applications, was not convincing to the conscience of the Tribunal.

4. Order dated 19.11.2020 is assailed before this Court by the Petitioner in the present writ petition. Be it noted that during the pendency of the writ petition, Petitioner was permitted to file an additional affidavit explaining the sequence of the proceedings before the CGIT from 2013 and reasons for non-appearance on the date when the appeal was dismissed in default as well as for condonation of delay in filing the restoration application. Detailed affidavit was filed by the Petitioner on 23.03.2021 and a response thereto was filed by the Respondents.

5. In the additional affidavit filed in this Court, it is sought to be explained by the Petitioner that the order dated 14.12.2016 was never communicated to the Petitioner and the Petitioner was under a bonafide impression that the appeal was pending before the CGIT. The said order came to the knowledge of the Petitioner only when coercive action was initiated by the Respondents.

6. On coming to know of the order dated 14.12.2016, an application was filed by the Petitioner for inspection of the file before the CGIT and file was inspected on 24.10.2019. After perusing the exact order, an application for restoration of the appeal was filed on 30.10.2019, which was dismissed by the CGIT.

7. The reasons set out in the application for restoration were that the counsel who was appearing on the previous dates, left the office of the main

counsel, without intimating the status of the proceedings or the date of hearing, on which date, the appeal was dismissed. Order dated 14.12.2016 was never communicated to the Petitioner by the office of the CGIT or the Respondents. Non-appearance was on account of reasons beyond the control of the Petitioner and bonafide. Petitioner should not be penalized due to the non-appearance of a counsel. In the application seeking condonation of delay under Section 5 of the Limitation Act, 1963, it was averred that the Petitioner was unaware of the order dated 14.12.2016 dismissing the appeal in default as the same was never served on or communicated to the Petitioner. On coming to know of the order, when coercive action was initiated by the Respondents, file was inspected on 24.10.2019 and immediately, an application for restoration was filed on 30.10.2019, which was within limitation period from the date of knowledge i.e. 24.10.2019 and the application for condonation of delay was filed by way of abundant caution.

8. Application was opposed by the Respondents on the ground that the order dismissing the appeal in default was passed after giving sufficient opportunities to the Petitioner to prosecute the appeal. Even earlier, the appeal was dismissed in default on 10.05.2016 which shows that the Petitioner is not serious and diligent in pursuing the appeal. Order dated 14.12.2016 was duly communicated to the Petitioner on the address mentioned in the appeal and the Petitioner was well aware of the dismissal of the appeal. Despite knowing that the appeal was dismissed Petitioner failed to take steps for restoration and woke up from its slumber only when the recovery order was issued. There is no explanation leave alone "sufficient cause" for not filing the restoration application for 3 years.

9. Finding merit in the contentions of the Respondents, CGIT dismissed the restoration and condonation of delay applications and relevant part of the order is as follows:

"Perusal of the order sheet does not reveal about filing or pendency of any other application as on 18.10.2016. More over on an earlier occasion i.e. on 10.05.2016, the appeal was dismissed for default of the appellant and it was restored to file by order dated 06.06.2016.

After that several adjournments were allowed for hearing and lastly it was dismissed for default on 14.12.2016. The circumstances clearly indicates the lack of diligence on the part of the appellant in conduct of the

appeal and furthermore the explanation for the default and delay mentioned in the petition do not sound convincing to the conscience and thus, not accepted. The petition for condonation of delay and restoration of appeal is found devoid of merit and rejected.â??

10. Based on the additional affidavit filed in this Court, Mr. Tejpal Singh Kang, learned counsel for the Petitioner contends that the non-appearance

before the CGIT was for reasons beyond the control of the Petitioner and bonafide. Mr. S.S. Panday, the earlier Advocate, who was appearing

before the CGIT on behalf of the main counsel for the Petitioner suddenly left the office, without communicating the next date of hearing and/or

recording the same in the diary where record of dates was maintained. During this period, Petitioner was engaged in several other litigations and

arbitrations and was under the bonafide belief that a notice would be sent by the CGIT intimating the date of hearing. The disconnect between the

Petitioner and the counsel engaged was compounded by the illness of the wife of the counsel, on account of which his visits to the office were bare

minimum. Subsequently, wife of the counsel expired on 14.03.2017 and he did not attend office for a long time, leading to a communication gap.

11. Mr. Kang next contends that during the relevant period, Employees Provident Fund Appellate Tribunal (EPFAT) merged with CGIT, vide

Notification dated 23.06.2017 and the files were being transferred from one office to the other. On 06.11.2017, office of CGIT shifted to Sector 10,

Dwarka and thereafter again on 01.05.2019 to Rouse Avenue Court Complex. On account of all these facts, Petitioner could not keep a track of the

matter before the CGIT. On learning of the order of dismissal, immediate steps were taken for restoration.

12. Learned counsel for the Respondents strenuously and vehemently opposes the petition. It is argued that Petitioner was very well aware of the date

of hearing before the CGIT when the matter was fixed for final arguments on 14.12.2020, but chose not to appear. Petitioner has never been diligent

in pursuing the appeal as the record would indicate and even earlier, the appeal was dismissed for non-prosecution. It is argued that no explanation

much less â??sufficient causeâ?? has been made out either before the CGIT or before this Court for non-appearance on 14.12.2016 or for not taking

steps for 3 years for restoration of the appeal.

13. I have heard learned counsels for the parties and also perused the order sheets of the CGIT placed on record by the Respondents along with their reply affidavit.

14. Order sheets indicate that on 10.05.2016, the appeal was dismissed in default due to non-appearance on behalf of the Petitioner herein, Appellant before CGIT. Directions were also issued to consign the file to the record room and for dispatch of copy of the order to the parties as per law. On an application moved by the Petitioner for restoration, the appeal was listed on 06.06.2016 and for the reasons stated in the application, it was restored.

Appeal was directed to be listed on 14.12.2016, for final arguments.

15. There is certainly merit in the argument of the Respondents that on 06.06.2016, when the matter was adjourned to 14.12.2016 for arguments, it was in the presence of the counsel for the Petitioner and he was aware of the date of 14.12.2016. In fact, the order sheets further reveal that an application was filed by the Petitioner for release of the Bank Account for which proceedings were held between 04.10.2016 and 18.10.2016 and Mr.

S.S. Pandey, Advocate was appearing for the Petitioner.

16. The question however before the Court is whether in the given facts, appeal should be restored and Petitioner given another opportunity to prosecute the same.

17. Having perused the additional affidavit and after hearing the arguments, this Court finds merit in the contentions of the counsel for the Petitioner.

The narrative of facts as it unveils from the pleadings is that Mr. S.S. Pandey, who was prosecuting the appeal on behalf of the main counsel for the

Petitioner, left the office without intimating the next date of hearing. The illness of the wife of the main counsel followed by her untimely death created

a communication gap between the Petitioner and the counsel. Merger of the CGIT and the EPFAT followed by the shifting of the CGIT on two

occasions is also a matter of record.

18. Before proceeding to examine the reasons seeking restoration of the appeal, it would be useful to refer to the law on condonation of delay under

Section 5 of the Limitation Act, 1963. In N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123, the Supreme Court was examining an order of the

High Court wherein the High Court had held that the Petitioner therein had failed to explain why he did not meet his Advocate for a long period and

was therefore guilty of negligence and could not blame the counsel. The Supreme Court observed that rules of limitation are not meant to destroy the rights of the parties but to see that they do not resort to dilatory tactics and held as under:

8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. 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 uncondonable 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.

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11. 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 promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury

so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.â??

19. The Supreme Court in *State of Jammu and Kashmir vs. Dr. Ashok Kumar Gupta* JT 1996 (1) SC 562, held that a pragmatic approach must be adopted and explanation for the delay must be considered so as to advance the cause of justice. The consideration by the Court should be so angulated and the delay considered from the perspective of justice.

20. In *M.K. Prasad vs. P. Arumugam* (2001) 6 SCC 176, the Supreme Court in fact held that even though the Appellant did not appear to be as vigilant as he ought to have been but the conduct as a whole did not warrant his castigation as an irresponsible litigant. The failure of the Appellant to adopt a vigilant approach should not be a ground for ousting him from litigation when there were valuable rights involved. Relevant para of the judgement is as under:

â??8. In construing Section 5 of the Limitation Act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The court has a discretion to condone or refuse to condone the delay as is evident from the words â??may be admittedâ? used in the section. While dealing with the scope of Section 5 of the Limitation Act, this Court in *Ramlal v. Rewa Coalfields Ltd.*

[AIR 1962 SC 361] held: (AIR pp. 363-64, para 6-7)

â??6. Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, *inter alia*, that any appeal may be admitted after the period of limitation prescribed therefor when the appellant satisfies the court that he had sufficient cause for not

preferring the appeal within such period. This section raises two questions for consideration. First is, what is sufficient cause; and the

second, what is the meaning of the clause "within such period"? With the first question we are not concerned in the present appeal. It is

the second question which has been decided by the Judicial Commissioner against the appellant. He has held that "within such period"

in substance means during the period prescribed for making the appeal. In other words, according to him, when an appellant prefers an

appeal beyond the period of limitation prescribed he must show that he acted diligently and that there was some reason which prevented him

from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner has held that "within such period"

means "the period of the delay between the last day for filing the appeal and the date on which the appeal was actually filed" he would

undoubtedly have come to the conclusion that the illness of Ramlal on February 16 was a sufficient cause. That clearly appears to be the

effect of his judgment. That is why it is unnecessary for us to consider what is "a sufficient cause" in the present appeal. It has been

urged before us by Mr Andley, for the appellant, that the construction placed by the Judicial Commissioner on the words "within such

period" is erroneous.

7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the

period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding

between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the

law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should

not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown

discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order

that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras

High Court in Krishna v. Chathappan [ILR (1890) 13 Mad 269] :

“Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and

discretion ought to be exercised upon principles which are well understood; the words “sufficient cause” receiving a liberal

construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.”

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9. Again in State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366] and G. Ramegowda, Major v. Special Land Acquisition

Officer [(1988) 2 SCC 142] this Court observed that the expression “sufficient cause” in Section 5 of the Limitation Act must receive a

liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence

or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law of limitation has been enacted

to serve the interests of justice and not to defeat it. Again in N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123] this Court held that

acceptability of explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing mala

fide or deliberate delay as a dilatory tactic, the court should normally condone the delay. However, in such a case the court should also

keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. In

that context the Court observed: (SCC p. 127, para 9)

“9. 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 uncondonable 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.â??

21. In *Ram Nath Sahu vs. Gobardhan Sahu* (2002) 3 SCC 195, the Supreme Court held that the expression â??sufficient causeâ?? within the

meaning of Section 5 of the Limitation Act, 1963 should receive a liberal construction to advance substantial justice where no negligence or inaction or

want of bonafides can be inflicted to a party. Reliance was in turn placed on an earlier judgement of the Supreme Court in *State of West Bengal vs.*

Administrator, Howrah Municipality (1972) 1 SCC 366, relevant paras of which are as follows:

â??26. The legal position when a question arises under Section 5 of the Limitation Act is fairly well-settled. It is not possible to lay down

precisely as to what facts or matters would constitute â??sufficient causeâ? under Section 5 of the Limitation Act. But it may be safely stated

that the delay in filing an appeal should not have been for reasons which indicate the partyâ?s negligence in not taking necessary steps,

which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a

particular case and each case will have to be decided by the courts on the facts and only tend to be a curb on the free exercise of the

judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to â??sufficient causeâ? or not.

It is needless to emphasise that courts have to use their judicial discretion in the matter soundly in the interest of justice.

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30. From the above observations it is clear that the words â??sufficient causeâ? should receive a liberal construction so as to advance

substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

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45. â?|â?|We are satisfied that in the circumstances of this case the appellant

has shown sufficient cause and it is not possible to impute to the appellant want of bona fides or such inaction or negligence as would deprive them of the protection of Section 5 of the Limitation Act.

We are, therefore, inclined to allow the three applications filed by the appellant in the High Court under Section 5 of the Limitation Act and

to condone the delay in filing the three appeals.â??

22. Tested on the touchstones of the aforesaid judgements, this Court finds that the Petitioner has made out a â??sufficient causeâ?? that prevented

him from appearing on 14.12.2016 before the CGIT as well as for the delay in filing the application for restoration of the appeal. As held by the

Supreme Court, Courts must adopt a pragmatic and not a narrow approach in deciding the applications under Section 5 of the Limitation Act, 1963.

Parties should not be shut out from pursuing their legal remedies by adopting a hyper-technical approach unless the party has been extremely negligent

or proven guilty of dilatory tactics. It is trite that no man should suffer a wrong by technical procedures of irregularities. Rules of procedures are

handmaiden of justice and should not affect substantial justice. The explanation given by the Petitioner for delay in filing the restoration application

does not reflect any malafide on the part of the Petitioner and was a result of the cumulative factors as aforementioned.

23. The impugned order is primarily based on a finding that there was lack of diligence on the part of the Petitioner. From the reasons urged by the

counsel for the Petitioner, this Court finds that non-appearance and delay in seeking restoration was a cumulative effect of several factors, including

genuine personal difficulties of lawyers engaged. It is well settled that parties should not suffer for the non-appearance of their lawyers. This Court is

of the view that the Petitioner should not suffer and ought to be permitted to prosecute the appeal. In Ram Kumar Gupta vs Har Prasad & Anr.

(2010) 1 SCC 391, the Supreme Court held that it would be improper to punish the Appellant for non-appearance of the counsel for the appellants,

merely because their chosen advocate had defaulted. Reliance was in turn placed on the judgement in Rafiq vs. Munshilal (supra) where the Supreme

Court has also drawn the same conclusion while considering the application for restoration of a writ application, when the counsel for the appellant

could not be present at the time of hearing of the application.

24. In these facts and circumstances, this Court is of the view that the while appeal should be restored in the interest of justice, however, looking at

the delay of 3 years in approaching the CGIT for restoration of the appeal and the sufferings of the workmen, whose dues are under consideration,

restoration cannot be unconditional and Petitioner must be put to monetary terms.

25. In view of the above, the writ petition deserves to be allowed, subject, however, to cost of Rs.50,000/-, to be deposited with the Delhi High Court

Bar Clerks Association, within a period of three weeks from today.

26. Impugned order dated 19.11.2020 passed by the CGIT is hereby set aside and the appeal is restored to its original number and status.

27. The subject matter of the appeal relates to the proceedings under Section 7(A) of the Employees' Provident Funds & Miscellaneous

Provisions Act, 1952 and at the cost of repetition, the dues of various workers are at stake under a welfare Legislation. This Court deems it fit to

request the Tribunal to decide the appeal as expeditiously as possible and not later than six months from today. Petitioner shall not seek unnecessary

adjournment before the CGIT and shall assist in expeditious disposal of the appeal.

28. It is made clear that this Court has not expressed any opinion on the merits of the Appeal and the CGIT shall decide the appeal uninfluenced by

any observations made in this order.

29. Writ petition is allowed and pending application is accordingly disposed of.