
(2016) 03 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : Cr.MP(M) No. 1364 of 2015

M/s Ultratech Pharmaceuticals & others	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 3 HimLR 1389

Hon'ble Judges : P.S. Rana, J.

Bench : Single Bench

Advocate : Sunil Awasthi, Advocate, for the Appellant; Ashok Sharma Assistant Solicitor General of India, for the Respondent

Final Decision : Disposed Off

Judgement

P.S. Rana, J.—Application filed under Section 5 of Limitation Act for condonation of delay in filing the revision petition. As per pleadings of parties following issues were framed on 6.11.2015:-

- (i) Whether there are sufficient grounds for condonation of delay as alleged. ??..Onus upon applicants
- (ii) Whether there is no cause of action to the applicants to file application under Section 5 of the Limitation Act as alleged. ?.Onus upon non-applicant
- (iii) Relief.

2. Court heard learned Advocate appearing on behalf of applicants and non-applicant at length and also perused the entire record.

Findings on Issue No. 1

3. Learned Advocate appearing on behalf of applicants submitted that there are sufficient grounds for condonation of delay is accepted for reasons hereinafter mentioned. AW1 Rajesh Jaglan appeared in witness box who has specifically

stated that applicants were not aware about the proceedings before learned trial Court and they came to know about proceedings on 27.8.2015. AW1 has specifically stated that on 28.8.2015 applicants contacted their counsel and engaged him to file present revision petition. AW1 has stated in positive manner that delay was not intentional and there was no lapse on part of applicants.

4. Non-applicant did not appear in witness box and did not adduce any rebuttal evidence. Testimony of AW1 remained unrebutted on record. There is no reason to disbelieve the testimony of AW1. Court is of the opinion that testimony of AW1 is trustworthy reliable and inspires confidence of Court. It was held in case reported in AIR 1987 SC 1353 title Collector Land Acquisition Anantnag and another v. Mst. Katiji and others that (1) Ordinarily a litigant does not stand to benefit by lodging the matter 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 would 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. (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 malafides. 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. In view of above stated facts issue No. 1 is decided in favour of applicants.

Findings on issue No. 2

5. Submission of learned Assistant Solicitor General appearing on behalf of non-applicant that there is no cause of action to applicants to file application under Section 5 of Limitation Act is rejected being devoid of any force for the reasons hereinafter mentioned. None appeared in witness box on behalf of non-applicant despite opportunity granted. Hence adverse inference under Section 114(g) of Indian Evidence Act is drawn against non-applicant. In view of fact that non-applicant did not adduce any positive cogent and reliable evidence on record in order to prove issue No. 2 issue No. 2 is decided against non-applicant.

Relief

6. In view of above stated facts application filed under Section 5 of Limitation Act is allowed and delay is condoned in the ends of justice subject to costs of Rs. 1000/- (Rupees one thousand only). Application is disposed of.