
(2015) 05 AHC CK 0116
In the Allahabad High Court
Case No : C.M.W.P. No. 26694 of 2015

Mukesh and Others

APPELLANT

Vs

Addl. District Magistrate (F and R), Mathura and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Citation : (2015) 8 ADJ 73 : (2016) 1 ALJ 147 : (2015) 5 AWC 4497 : (2015) 128 RD 490

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Rajesh Dutta Pandey, for the Appellant; A.P. Paul and B.B. Paul, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ran Vijai Singh, J—Heard Sri Rajesh Dutta Pandey, learned Counsel for the petitioners, learned Standing Counsel for the State respondents and Sri B.B. Paul along with Sri A.P. Paul, learned Counsel for the respondent No. 3. By means of this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the orders dated 24.3.2015 passed by the Additional District Magistrate (Finance and Revenue) Mathura in Revision No. 18/2012-13/D2013015000328 (Mukesh and others v. Manjari Devi) and order dated 24.7.2013 passed by the Tehsildar Mahavan in Case No. 207 T.M./178 T.M. (Mukesh and others v. Doota).

2. Vide order dated 24.7.2013, the orders dated 31.3.1994, 24.9.1994, 6.7.1995, 21.7.1995 and 19.8.2006 were set aside after condoning the delay and the restoration application dated 20.12.2007 seeking recall of the order dated 31.3.1994 was allowed. Whereas by the subsequent order dated 24.3.2015, revision filed by the petitioners, against the order dated 24.7.2013 passed by the Tehsildar, has been dismissed by the Additional District Magistrate (Finance and Revenue) Mathura.

3. While assailing the impugned orders, learned Counsel for the petitioners

contends that the petitioners' name was ordered to be mutated on the basis of unregistered Will vide order dated 31.3.1994 passed by the Tehsildar. Seeking recall of this order, four applications were filed from time to time and those applications were dismissed in default on 24.9.1994, 6.7.1995, 21.7.1995 and 19.8.2006. Thereafter another restoration application was filed on 20.12.2007. This application was barred by time, therefore an application for condonation of delay was also filed. This application was allowed on 30.3.2009. Against this order, the petitioners, herein, have filed Revision No. 32/2008-09 [Mukesh and others v. Manjari Devi and others]. The revision was heard and decided by Additional District Magistrate (Finance and Revenue) Mathura by allowing and remitting the same vide order dated 31.7.2009 before the Tehsildar to first of all decide the question of limitation and thereafter pass a final order. It is contended that after remand, while passing the order dated 24.7.2013, delay has not been condoned and again the same illegality has been committed. In the submission of learned Counsel for the petitioners, there was almost 11 years delay in filing the application. Learned Counsel for the petitioners had placed reliance upon the number of decisions on the question of delay condonation before the Court below but without addressing on those points, delay condonation application has been allowed by a cryptic order and the case has been restored to its original number.

4. I have heard learned Counsel for the parties and perused the impugned orders.

5. The Tehsildar Mahavan, while passing the order dated 24.7.2013, has taken the note of the arguments advanced by learned Counsel for the opposite party (the petitioner) and thereafter condoned the delay taking into consideration that contesting respondent Manjari Devi is a legal heir of late Doota son of Totta whereas the petitioners claim their right on the basis of unregistered will. The Tehsildar took the view that in case, delay is not condoned, substantial justice cannot be imparted to the parties, hence he condoned the delay.

6. It is settled that once the delay has been condoned meaning thereby the Court has exercised its discretion in a positive manner and unless there is no explanation or the explanation furnished is mala fide, the higher Court should not interfere with such orders.

7. The Apex Court in *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, AIR 2000 SC 2306 : (2000) 5 JT 389 : (2000) 4 SCALE 417 : (2000) 9 SCC 94 : (2000) SCC(L&S) 845 : (2000) AIRSCW 2389 : (2000) 4 Supreme 197 has held that "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."

This view has constantly been followed by the Apex Court in numerous cases thereafter. Reference may be given in Apangshu Mohan Lodh and Others Vs. State of Tripura and Others, AIR 2004 SC 267 : (2003) 9 SCALE 482 : (2004) 1 SCC 119 : (2004) SCC(L&S) 10 : (2003) 5 SCR 39 Supp : (2004) 1 SLJ 251 State (NCT of Delhi) Vs. Ahmed Jaan, (2008) CriLJ 4355 : (2008) 10 JT 179 : (2008) 152 PLR 735 : (2008) 11 SCALE 2455 : (2008) 14 SCC 582 Indian Oil Corporation Ltd. and Others Vs. Subrata Borah Chowlek, etc., (2011) 130 FLR 324 : (2010) 14 SCC 419 In Jeet Narain and another v. Govind Prasad and others, 2010 (110) RD 374 (SC) the Apex Court has condoned the delay of 26 years considering the merit of the case in which the order was obtained by playing fraud.

8. In view of the law laid down by the Apex Court in the aforesaid cases, it is abundantly clear that while considering the delay condonation application, the Court has to see the merit of the case also as the law of limitation is not meant to take away the right of appeal. The Courts are meant for imparting substantial justice and not to scuttle the justice on technicalities. The length of delay is also not very much material if there is substance on merit.

9. However, if the Court/Tribunal, while dealing with such applications, comes" to the conclusion that there had been any slackness/negligence on the part of the parties in not instituting the action well within time and that has caused inconvenience to the other side, the inconvenience caused to the other side cannot be made basis for not extending the period of limitation and the inconvenience caused to the other side may be compensated by imposing some cost payable to the person to whom such inconvenience is caused, but in all circumstances, efforts should be made to adjudicate the matter on merit instead of throwing it at the threshold on the ground of limitation, unless the explanation is hopeless and it revives a stale claim.

10. Looking into the various pronouncements of the judgments on this point and considering the facts that the delay condonation application was filed after almost 11 years and further considering the rustic nature of the applicant, I find that while condoning the delay and allowing the restoration application, the Court below ought to have compensated the petitioners properly. Therefore I direct the respondent No. 3 to deposit Rs. 5,000/- before the Tehsildar Mahavan along with certified copy of the order of this Court. The said amount on demand be returned to the petitioners and only thereafter the Tehsildar shall proceed to decide the case on merit. With the aforesaid observation, this writ petition is disposed of.