
(2013) 01 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 364 of 1977

Nathu Khan

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) 7 ADJ 430 : (2013) 120 RD 281

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : H.S.N. Tripathi, for the Appellant; S.A. Jilani, for the Respondent

Judgement

Ran Vijai Singh, J.—I have heard Sri Pankaj Tripathi, holding brief of Sri H.S.N. Tripathi, learned counsel for the petitioner and learned Standing Counsel. Nobody appears in revised call for the private respondents. Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the orders dated 24.9.1976 passed by the Deputy Director of Consolidation in Case No. 1635 Nathu Khan v. Yaseen and others, and order dated 12.3.76 passed by the Consolidation Officer in Case No. 2939 Nathu Khan v. Yaseen. vide order dated 24.9.1974, petitioner's objection u/s 9A-2 of U.P. Consolidation of Holdings Act (in short the Act") has been dismissed as barred by time whereas by the subsequent order dated 12.3.1976 petitioner's revision has also been dismissed.

2. The facts giving rise to this case are that it appears the petitioner, herein, has filed an objection u/s 9A-2 of the Act which was barred by time, therefore an application for condonation of delay was also filed. The Consolidation Officer has rejected the application on the ground that the reasons stated in the affidavit are not sufficient to condone the delay. It is also noted that notification u/s 9 was published on 31.10.1973 and the village was denotified on 16.4.1974. The petitioner has filed objection on 19.9.1975 taking ground that earlier he was agitating the matter before the revenue Courts and thereafter he has been advised to file an objection before consolidation Court as village has gone under consolidation operation. The Consolidation officer found that the delay was not

properly explained, therefore rejected the application for condonation of delay. The petitioner has filed revision that too has been dismissed.

3. It may be noticed that with regard to the land in dispute, the petitioner has filed Suit No. 1059 of 1973 u/s 229B of U.P. Act No. 1 of 1951 against Yasin and Zulum Khalil sons of Rasool Bux, Mohammad Raza and Bashir (now represented by opposite party II set). The said suit was decreed on 12.7.1973. However, it appears a restoration application was filed by the respondents and without there being any notice to the petitioner, the decree dated 12.7.1973 was set aside and the suit was restored to its original number. After contest, the aforesaid suit was abated before the consolidation Courts in view of sub-section 2 of Section 5 of the Act. It appears the petitioner has filed suit after notification of Section 4 of the Act whereas he should have filed objection before the consolidation authorities. It would further appear that on the legal advice of the counsel instead of filing objection before the consolidation Courts the suit was filed before the revenue Court and ultimately the suit stood abated. Thereafter, the petitioner was advised to file objection before the consolidation Courts and pursuant thereto, he filed an objection alongwith an application for condonation of delay which was rejected saying that the delay has not been properly explained.

4. It is common knowledge that the rustic villagers residing in a remote area of the village are unaware of the legal provisions and its implications. They are dependent on the legal advice of the counsel. Hence once the petitioner has been advised to file a suit seeking declaration before the revenue Courts, he marched on the way of filing suit which has been ultimately abated. Thereafter, the petitioner was advised to file objection before the Consolidation Officer. Obviously the objection has become time barred. The Consolidation Officer took the view that the delay has not been properly explained and the cause shown is not sufficient to condone the delay in entertaining the objection. While doing so, the Consolidation Officer, it appears, has not taken note of Section 14 of the Limitation Act, 1963 which reads as under:

(14) Exclusion of time of proceeding bona fide in Court without jurisdiction.--

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party of or the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

Explanation.--For the purposes of this section--

(a) in excluding the time during which a former civil proceeding was pending, the day on which the proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

5. From the bare reading of Section 14 it is apparent that time spent in prosecuting the bona fide proceeding has to be excluded while computing the period of limitation for filing suit/objection.

6. Here in this case, as has been noticed, the petitioner, on the legal advice, has availed the remedy of filing suit u/s 229B of U.P. Zamindari Abolition and Land Reforms Act, 1950, therefore the period spent in proceeding should have been taken note while condoning the delay in filing the objection.

7. Otherwise also, the Consolidation Officer in my opinion has forgotten that he was dealing with an application for condonation of delay that too of rustic villager who is unaware of legal provisions. It was the duty of the Court to visualise the fact that dispute has never seen light of the day by the appropriate Court. Once the litigant has become victim of wrong legal advice and on another occasion, he had been condemned on account of limitation.

8. The Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , has given following guidelines while dealing with the delay condonation application:

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.

9. The Apex Court in the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, , after considering various cases of the Apex Court on condonation of delay application has held:

Para 12. ...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 in justice-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-?-vis private litigant could be laid to prove strict standards of sufficient cause.

10. The above principle has been taken care of in numerous cases by the Hon'ble Apex Court thereafter. Reference may be given to Gangadeep Pratisthan Pvt. Ltd. and Others Vs. Mechano and Others, and Jeet Narain and another v. Govind Prasad and others, 2010 (3) ADJ 470 (SC).

11. In view of the law laid down by the Apex Court 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 to the parties and not to scuttle the justice on technicalities. The length of delay is also not very much material if there is a substance on merit. The very purpose of establishment of Court is to impart substantial justice to the parties. The Courts are meant and respected not for legalising injustice on technicalities. It is also settled that slackness if any on the part of any party has caused inconvenience to the otherside that can be compensated by imposing some costs instead of closing the door of justice for ever. Here in this case, the consolidation authorities have taken very technical view of the matter holding that the delay has not been properly explained. I am satisfied that the delay has been properly explained, therefore the delay in filing objection is hereby condoned. The delay condonation application is allowed. The impugned orders passed by the consolidation Courts dated 24.9.1976 and 12.3.1976 are hereby quashed. The writ petition succeeds and is allowed. The Consolidation officer (the respondent No. 2) is directed to proceed with the matter on merit in accordance with law.