
(2007) 04 OHC CK 0030
In the Orissa High Court

Nilasaila Nayak

APPELLANT

Vs

Authorized Officer-cum-Assistant Conservator of Forests and
Another

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2007) 104 CLT 546 : (2007) 1 OLR 821

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—This writ petition has been filed assailing the order dated 19.4.2006 under Annexure-1 passed in Misc. Appeal No. 19 of 2004 by the learned District Judge, Balasore.

2. Misc. Appeal No. 19 of 2004 was filed by the writ petitioner against the order of confiscation passed by the Authorized Officer-cum-Assistant Conservator Forests, Udala under the Orissa Forest Act in O.R. Case No. 216-N of 1999-2000. As the said appeal was filed beyond the prescribed period, it was accompanied by an application u/s 5 of the Limitation Act for condonation of delay.

3. While considering the application for condonation of delay filed by the writ petitioner-appellant, the learned District Judge by the impugned order held that the writ petitioner-appellant has deliberately delayed in filing the appeal and, therefore, refused to condone the delay and consequently dismissed the appeal on the ground of limitation.

4. Mr. B.P. Ray, learned Counsel appearing for the writ petitioner submits that the learned District Judge has acted erroneously and illegally in disbelieving the explanation given by the writ petitioner-appellant that due to his illness, he could not file the appeal in time. He further submits that the learned District Judge has disbelieved the illness of the writ petitioner-appellant solely on the ground that

the petitioner did not file the prescription and medicine receipts etc. though, as a matter of fact, a certificate from the treating physician was filed by the writ petitioner-appellant and without any reason came to the conclusion that the said certificate is not trustworthy and has been created only for the purpose of the case.

5. We have perused the impugned order dated 19.4.2006. From the same, we find that the submissions made by Mr. Ray should be accepted as the learned District Judge assigned no reason as to why he found the medical certificate to be not trustworthy and without any basis and held that the same has been created only for the purpose of the case.

6. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the Supreme Court while dealing with the question of condonation of delay has laid down that 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. The Supreme Court has further held that "every day's delay must be explained" does not mean that a pedantic approach should be made, and, therefore, the doctrine must be applied in a rational commonsense pragmatic manner. 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. 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, rather, he runs a serious risk.

7. Finding as above, the Supreme Court in the facts of the said case held that making a justice oriented approach on the above perspective, there was sufficient cause for condoning delay in the institution of the appeal which was being considered in the said case.

8. Therefore, in substance, it was held in the said case that Courts should adopt a liberal approach while dealing with an application u/s 5 of the Limitation Act.

9. Applying the above principle, to the facts of the present case, we find that the learned District Judge has based his finding that the medical certificate produced by the writ petitioner-appellant is not trustworthy and has been created only for the purpose of the case, on surmises and conjectures which runs as antithesis to the cause of justice. In our view, the learned District Judge should have condoned the delay and heard the appeal on merit on admitting the same.

10. We, therefore, quash the impugned order dated 19.4.2006 passed in Misc. Appeal No. 19 of 2004 by the learned District Judge, Balasore, under Annexure-1 and remit the matter back to the said learned District Judge to hear the Misc. Appeal afresh on merit after admitting the same and issuing notice to the opp. parties-respondents.

The writ petition is accordingly allowed.

B.P. Das, J.

11. I agree.