
(2003) 11 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 45988 of 2003

Phool Chand and Another	Vs	APPELLANT
Dy. Director of Consolidation and Others		RESPONDENT

Date of Decision : 04-11-2003

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2004) 1 AWC 48

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Madan Mohan Srivastava, for the Appellant; Indra Raj Singh and A.K. Upadhyay and G.N. Srivastava, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—By means of this petition, the petitioner has assailed the judgment dated 18.9.2003 passed by the Deputy Director of Consolidation, Azamgarh, by which the said authority dismissed application u/s 5 of the Indian Limitation Act preferred by the petitioners in revision.

2. Necessary facts may be recapitulated and they are that deceased Tapsi father of the petitioner preferred revision against the judgment dated 22.4.1983 on 31.5.1983 passed by the appellate authority. During the pendency of the revision, the aforesaid Tapsi breathed his last and he was accordingly substituted by heirs and legal representatives who are the petitioners in the instant petition. Subsequently, it transpired that the revision was filed belatedly and consequently, application u/s 5 attended with the affidavit of the learned counsel representing the petitioners was filed. However, the revision came to be dismissed on the premises that application u/s 5 of the Indian Limitation Act was filed after an efflux of 17 years, though it brooks no dispute that the revision was still pending.

3. Learned counsel for the petitioner canvassed that the delay was too negligible

to be taken into account in filing revision and further that the revision was presented by the learned counsel who had been duly instructed to file application for condonation of delay. It was further submitted that the deceased Tapsi during whose life time revision was preferred was unlettered besides being old and infirm and if at all, the counsel failed to file application u/s 5 of the Limitation Act, the petitioners cannot be visited with penalties of law. It was further canvassed that materials on record clearly go to show that the delay in filing the revision was not born of any laches or lapses on the part of the deceased or the petitioners and in view of the affidavit filed by the learned counsel representing the deceased and the petitioners, the authority concerned ought to have taken liberal view. He further quipped that Section 5 of the Limitation Act simply postulates satisfaction of the Court and does not envisage filing of application u/s 5 of the Limitation Act as an indispensable requirement to warrant consideration and consequent condonation of delay. He further propounded that all that is required is that there should be material on record satisfying the Court and in case formal application has not been made and condonation of delay has been pressed into service by oral prayer following by cogent and convincing materials on record, the delay could be condoned. Reverting to the facts of the present case, the learned counsel submitted that application in the Instant case was not filed along with the revision but was subsequently made during the pendency of the revision, it should have been considered to have been made within time and in the circumstances the application u/s 5 ought to have been allowed and in consequence it was argued that the Impugned order rejecting the application for condonation of delay commends itself to be set aside. Per contra, Sri G.N. Srivastava, learned counsel representing the opposite parties contended that in case application for condonation of delay is not filed along with the case, the authority would have no jurisdiction and the revision would be rendered liable to be dismissed and in vindication of this stand placed credence on a decision in Ragho Singh v. Mohan Singh 2000 RD (91) 689. He further contended that the order impugned herein was rightly passed and was made in accordance with law.

4. I have scrutinized the rival contentions made across the bar and also considered the materials on record. The questions that emerge for consideration in the above conspectus are ; (1) Whether the Court on the basis of oral prayer supported by materials on record could decide the question of sufficiency of the cause and could condone the delay and (2) whether during the pendency of the revision, application u/s 5 of the Indian Limitation Act for condonation of delay in filing the revision could be preferred and whether the revisional authority could consider such application for condonation of delay.

5. Before coming to grips with the respective contentions, it would be appropriate to acquaint myself with the provisions of Section 5 of the Indian Limitation Act which is abstracted below ;

"5. Extension of prescribed period in certain cases. --A n y appeal or any application, other than an application under any of the provisions of Order XXI of

the CPC , 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

The provisions of afore-quoted section are conspicuous by absence of any requirement that a formal application u/s 5 was a sine qua non for condonation of delay. All that is required is that the applicant should satisfy the Court that there was sufficient cause for not preferring the appeal or making the application within such period. An analogous question was involved in the case in Beni Madho v. Deputy Director of Consolidation 2003 (1) CRC 408 . In which this Court relying upon a decision of the Apex Court in Davinder Pal Sehgal and Another Vs. Partap Steel Rolling Mills Pvt. Ltd. and Others, ruled that in case, it appears to the Court that sufficient cause has been shown, the Court may admit the appeal after the prescribed period. In the present case., application u/s 5 of the Indian Limitation Act came to be filed during pendency of the revision. A perusal of the record reveals that counsel representing the petitioner had filed affidavit in which he admitted to his mistake in not preferring formal application u/s 5 of the Limitation Act to explain the delay of few days. in connection with this, it may be noticed here that mistake on the part of the counsel/lawyer has been held to be sufficient cause in a catena of decisions. The essence that surfaces from the text of various decisions of the Apex Court in connection with this, appears to be that sufficient cause should receive a liberal construction so as to advance substantial justice when no negligence nor inaction, nor want of bona fides is imputable to the party concerned. As a matter of fact what is sufficient cause, cannot be described with certainty for the obvious reasons that facts on which questions may arise may not be identical inasmuch as what may be sufficient cause in one case may be otherwise in another. However, what is of essence is whether it was an act of prudent or reasonable man (See Shakuntala Devi Jain Vs. Kuntal Kumari and Others, . It appears from the record that the revision was preferred on 26.8.1983. Affidavit filed by one Shamshuzzoha Abbasi, advocate stated to be representing the petitioner was not accepted by the revisional court ostensibly on the premises that the vakalatnama initially filed to represent the petitioner had become brittle and was torn and it could not be figured out as to who was the lawyer who initially represented the deceased and the petitioner and further that another vakalatnama bearing 13.6.1986 as the date on which it was filed, was in fact filed by Shamshuzzoha Abbasi, advocate which showed that he was representing one Ram Nath respondent No. 4 in the revision. Besides the above, what appears to have weighed heavily with the revisional court was that the application u/s 5 had come to be filed after an efflux of 17 years from the date of filing of the revision and after elapse of 12 years from the date of death of Tapsi. The revisional court appeared to be dismissive of the ground that Tapsi was old and infirm and he was not keeping good health

and observed that no such certificate has been brought on record to vouchsafe the fact that Tapsi was old and infirm and he was not keeping good health. In the conspectus, it is noticeable that no objection or counter to the affidavit filed by the learned counsel was preferred demurring to the averments that it was the mistake of the counsel and that Tapsi was Illiterate, old and infirm man and further that he had instructed his counsel to file application u/s 5 of the Limitation Act. In my opinion, the averments in the affidavit were potent enough to rationalize the delay, which were owing to the own fault of the counsel according to the own admission in the affidavit. In iliad of cases, the Apex Court has, in no Delphic terms, held that the term sufficient cause" should receive liberal construction. In Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, , the Supreme Court went to the extent of holding that courts should not proceed with the tendency of finding fault with the cause shown and reject the petition in slipshod order and that there is no straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. It was further observed that sufficient cause should receive a liberal Interpretation so as to advance substantial Justice and that explanation offered should not be rejected taking a hyper technical or pedantic view of the matter. Another decision bearing on the point is the decision in N. Balakrishnan Vs. M. Krishnamurthy, The Supreme Court pronounced that rules of limitation are not meant to destroy the right to parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. It was further observed that law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. it was further quipped by the Apex Court that it must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. In various pronouncements, it has also been held that an uncontroverted affidavit on facts is liable to be accepted. In Controller of Court of Ward, Kolhapur and Another Vs. G.N. Ghorpade and Others, it was held that an uncontroverted affidavit shall be taken as an affidavit on fact. The distillate of above discussion is that satisfaction of the Court on sufficiency of cause is enough even if no formal application u/s 5 has come to be filed. No doubt, in the instant case, revision was filed without accompanying application u/s 5 of the Limitation Act and the application u/s 5 was for the first time preferred after a lapse of 17 years but what is of essence here in this case is that counsel representing the petitioner himself came forward on realization being borne on him to file the affidavit admitting to his mistake which affidavit according to the own showing of the record, remained uncontroverted. Even otherwise, it would seem to me in the conspectus of the facts and circumstances that belated application was filed as a part of strategy or due to some impish streak of protracting the litigation but the averments contained in the affidavit

sworn by the counsel himself seem to be cogent and convincing particularly when the causes of delay have not been controverted by means of objection or counter-affidavit. I should now descend to the case law relied upon by the learned counsel for the opposite parties. The learned counsel relied upon decision of the Apex Court in Ragho Singh v. Mohan Singh. 2000 (91) RD 689. From a perusal of the said decision, it appears to me that the decision has been rendered in different context. In that case, appeal was filed beyond time by 10 days with no application u/s 5 of the Limitation Act accompanying it and still the Additional Collector allowed the appeal without condoning the delay. Hence the decision cited across the bar by the learned counsel for the opposite party is unavailing in the fact situation of the present case. In the perspective of above discussion, the first question is answered in affirmative and it is held that in case no formal application has been filed but there is oral prayer on material on record, it could be considered to be sufficient for condonation of delay upon satisfaction of the Court.

6. The second question is interknit with the first question and therefore, answer of the second question is implicit in the aforestated discussion. However, in the conspectus of the above discussion. I veer round to the firm view that the revision having not been decided on merit, even belated application could be filed before decision of the revision provided the explanation offered for delay is convincing to the satisfaction of the Court. Therefore, the second question too is also answered in affirmative. Before parting with the discussion, I would not forbear from giving vent to my expression that all disputes arising from consolidation proceedings are State sponsored dispute in which for protection of their rights, the affected parties seek remedy before the consolidation authorities. It should also be borne in mind that with prevailing conditions in our countryside, the courts should liberally construe the provisions of Limitation Act and every delay should not be assayed with rigidity or taking a hyper technical view on the anvil. In my view a reasonable cause should not be sacrificed at the altar of too technical view.

7. As a result of forgoing discussion, I converge to the conclusion that the impugned order suffers from material irregularity and cannot be sustained. The petition succeeds and is allowed and the Impugned order is accordingly quashed. In consequence, it is directed that the Deputy Director of Consolidation shall decide the revision on merits in accordance with law with all expedition.