
(2007) 08 DEL CK 0044

In the Delhi High Court

Case No : CMs 11278-79 of 20007 in Writ Petition (C) 2929 of 1990

Rabi Shanker Sen Gupta

APPELLANT

Vs

ITDC

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2007) 08 DEL CK 0044

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Madhumita Bhattacharjee, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—These applications have been filed by the petitioner for recalling the order dated 24.7.2002, by which the writ petition was dismissed as none appeared for the petitioner. It may be noted that subsequently, in January 2004, the petitioner filed two applications being CM Nos. 1120/2004 and 1121/2004, seeking restoration of the writ petition and for condensation of delay. As none appeared on his behalf to prosecute the aforesaid applications, the same were dismissed for non-prosecution. The present applications have been filed by the petitioner seeking the same relief.

2. It is stated in the application that the petitioner is a quasi literate person and had entrusted his case to his Advocate, and the said Advocate is to be blamed for not taking any steps for restoration of the petition. It is further stated that the petitioner was continuously interacting with his Advocate since the year 2001, and the Advocate kept assuring him that his case was pending and was being adjourned from time to time. Thus, the petitioner was under the bona fide belief that his case was being taken care of and he did not make any independent enquiry with regard to the case.

3. Counsel for the petitioner states that the petitioner was informed by his previous Advocate in the end of the year 2003 that the petition was dismissed for non-prosecution and after coming to know of the same, the applications for restoration of the petition and condensation of delay were filed, while engaging a new Advocate in January, 2004. As noted above, the aforesaid applications were dismissed for non-prosecution on 30.1.2004. It is stated that the petitioner was unaware of the fact that an order of dismissal of the aforesaid applications was passed by this Court on 30.1.2004, as his counsel did not inform him and instead, told him that the case was listed for hearing on 23.4.2007, but as the petitioner doubted the progress of the case, he engaged the present Advocate, who inspected the court file and filed these applications on 27.7.2007. It is stated that the petitioner has been diligently prosecuting his case and cannot be held responsible for dismissal of the applications for non-prosecution.

4. I have perused the first set of applications filed in January, 2004 as also the second set of applications filed in August, 2007. In the first set of applications, it was stated that in April, 2003, the petitioner was informed by his Advocate that he was withdrawing from practice and thus, the petitioner was asked to make alternate arrangements. Thereupon, the petitioner contacted another counsel in May, 2003 and delivered the papers of his case to him. The said Advocate learnt that the writ petition had been dismissed for non-prosecution on 24.7.2002. Accordingly, applications for restoration and for condensation of delay were prepared in the month of May, 2003 itself. However, the petitioner was beset by a number of family problems including the ill-health of his mother and his son owing to which he was unable to contact his counsel and could not get the restoration application filed. Thus, the application for restoration came to be filed only in January, 2004 along with the application seeking condensation of delay of 511 days in filing the application for restoration. As noted above, since none appeared for the petitioner when the applications were listed in Court on 30th January, 2004, the same were dismissed for non-prosecution.

5. After a gap of 3-1/2 years, the petitioner has filed the present applications for restoration of the writ petition along with an application for condensation of delay seeking condensation of delay of 1260 days in filing the application for restoration.

6. A perusal of the restoration application shows that the petitioner has set up the same story as narrated in the earlier application for restoration. In other words, he has squarely blamed his previous counsel for not prosecuting the applications. There is not a whisper in the application as to what steps did the petitioner take from January 2004 when the earlier applications for restoration and condensation of delay were filed right up to August, 2007 when the present application came to be filed except for vague and inchoate averments to the effect that upon repeated persuasion, he was informed by his previous counsel that his case would be listed on 23rd April, 2007. Blaming his previous counsel for non-cooperation, the petitioner has stated that he engaged the present

counsel to inspect the court record, and immediately after the court record was inspected on 24th July, 2007, these applications have been filed.

7. Ordinarily, the court should adopt a liberal approach while disposing of applications for condensation of delay and that the word "sufficient cause" used u/s 5 of the Limitation Act should receive a liberal construction so as to advance the cause of substantial justice. There is also no quarrel with the proposition that as against a technical and pedantic approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits.

8. At the same time, a litigant cannot claim absolute immunity and wash his hands off by laying the entire blame upon his Advocate for negligence in conducting the matter. Reference in this regard is made to a judgment of the Supreme Court in the case of Salil Dutta Vs. T.M. and M.C. Private Ltd., wherein it was observed as below:

The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

9. In the light of the facts and circumstances narrated hereinabove, this Court is not persuaded to exercise its powers of condensation of delay in favor of the petitioner and to condone the delay of 1260 days in filing the present application as the petitioner has failed to furnish any satisfactory Explanation in his application warranting condensation of delay. On the contrary, his conduct does not inspire any confidence at all. The court is also skeptical about the Explanation offered which is found to be rather sketchy, if not virtually non-existent.

10. Admittedly, no complaint has been filed against the previous Advocate, who was allegedly not diligent in pursuing the writ petition on behalf of the petitioner. Seeking to pass the entire blame on to the Advocate and trying to portray that the petitioner was a quasi literate person and hence totally unaware of the nature and significance of the pending proceedings is quite unacceptable, particularly, when the petitioner is a matriculate .Further, it is also not a case where the petitioner is not residing in the city and, Therefore, could not remain in touch with his counsel. Having participated in the inquiry proceedings and also having made representations to the management against the termination order, the petitioner appears to be well-aware of the nuances of litigation.

11. In a case where the petitioner had found the earlier counsel engaged by him to be non-diligent, thus resulting in dismissal of the writ petition he should have been all the more diligent and vigilant in following up his applications for restoration of the writ petition as also for condensation of delay of 511 days. Except for a vague averment about the non-cooperation of his Advocate, there is not a whisper in the application about the steps taken by the petitioner to pursue the matter with his counsel between January 2004 and April 2007, i.e. for about 3 1/2 years.

12. For the aforesaid reasons, this Court refuses to exercise its discretion to allow these applications and condone a delay of 1260 days. Both the applications are Therefore dismissed.