
(1999) 09 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. I95 of 1999

Rajinder Kumar Sud

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-09-1999

Acts Referred:

Limitation Act, 1963 — Section 5
Telegraph Act, 1885 — Section 7B

Citation : (2000) 1 ShimLC 201

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Ashok Sud, for the Appellant; K.S. Rathore, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This revision petition is directed against the order dated May 3, 1999 passed by the learned Additional District Judge, Shimla whereby an application u/s 5 of the Limitation Act moved by the Respondents for condonation of delay in filing an appeal before the said Court, has been allowed.

2. The facts leading to the presentation of the present revision, in brief, are that the Petitioner (hereinafter referred to as "Plaintiff") instituted a suit for declaration to the effect that the act of the Respondents (here-after referred to as "Defendants") in disconnecting the telephone No. 78103 installed in the premises of the Plaintiff is null and void and the demand notices with respect to the local calls for the different periods amounting to Rs. 6,694/- are illegal, unwarranted and not binding to the Plaintiff, and for mandatory injunction directing the Defendants to restore the telephone to working order and to properly investigate the matter of the excess billing and to take remedial steps for proper billing of the telephone. The suit was contested by the Defendants on various grounds. Finally, the learned Sub-Judge, First Class, Shimla decreed the suit vide judgment dated October, 22, 1993.

3. Feeling aggrieved, the Appellants/Defendants presented a memo of appeal against the said judgment and decree of the learned Sub-Judge alongwith application u/s 5 of the Limitation Act for condonation of delay in filing the said appeal. Since the appeal was assigned to the learned Additional District Judge, Shimla, therefore, the application u/s 5 of the Limitation Act for condonation of delay came to be heard by him and he allowed the application by the impugned order.

4. There are certain admitted material facts for consideration of the impugned order, such facts are that the judgment and decree against which the appeal has been preferred by the Defendants, had been passed on October 22, 1993 in the presence of the counsel for the parties. The application for supply of copy was presented for the Defendants on April 5, 1994 and the copy was received by them on April 8, 1994. The memorandum of appeal preferred against the aforesaid judgment and decree is dated August 31, 1994 though it appears to have been drafted earlier and the type-written day given thereunder appears to have been subsequently corrected as "31st". It has been presented in the office of the learned District Judge on September 3, 1994.

5. It is averred in the application u/s 5 of the Limitation Act that the matter remained under consideration with the Defendants/Departments and it took more time for arriving at a decision whether to file an appeal or not and that the delay was caused as the matter was to be discussed with different Sections of the Department before filing the appeal, therefore, it is claimed that the delay in filing the appeal occurred for the reasons beyond the control of the Defendants.

6. The application was contested by the Plaintiff mainly on the ground, as averred in his reply to the application, that the judgment and decree sought to be challenged were passed on October 22, 1993 and the Defendants applied for the certified copies of the judgment and decree on April 5, 1994 and it has not been explained by them as to why the steps for obtaining the certified copies of the judgment and decree were not taken during the period from October 22, 1993 to April 5, 1994 and that there is no explanation as to what prevented the Defendants to file the appeal immediately after obtaining the copies of the judgment and decree on April 8, 1994.

7. The Defendants filed rejoinder to the reply wherein they denied the objections taken in the application and claimed that such objections are not borne out by the record. It has further been reiterated that the matter remained under active consideration and they were dealing with the matter and were not negligent at any point of time, and that it was in fact a decision-taking process which took time,

8. It has been argued by the learned Counsel for the Plaintiff that no reason what-so-ever has been assigned by the Defendants for the delay in filing the appeal, particularly, during the period from October 22, 1993 to April 5, 1994 the Defendants did not take any step in the matter and the general excuse that the

matter was being considered and it was under active consideration and various Sections were involved in the process of discussion, are just a lame excuse and there is not even a reasonable cause much less sufficient cause to condone the delay in filing the appeal, therefore, the impugned order is unsustainable in the eyes of law.

9. On the other hand, the learned Counsel for the Defendants has submitted that the Defendants could not have taken an individual decision in filing the appeal and process of consultation and taking decision in the matter was involved which took its own time to finalise, therefore, the delay in filing the appeal deserves to be condoned.

10. I have given due consideration to the arguments advanced for the parties and have also gone through the records particularly the impugned order. The learned Additional District Judge while arriving at the conclusion that the delay in filing the appeal must be condoned has relied on *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*, ; *State of Haryana v. Chandra Mani and Ors.* (1996) 3 SC 132; *State of H.P. v. Badri* 1997 (2) Sim. L.C. 304 and *Telecom District Manager, Goa and others Vs. V.S. Dempo and Co., and others*, . Be it stated that in the former three cases the emphasis is that Court should not insist on explanation for every day's delay where the Government is a party because of the system and practices in which the matters are taken by the bureaucracy and the concerned Officers and officials of the Government and that while dealing with such matters the approach must be justice oriented rather than the technical one and when grant of substantial justice is pointed against the technical plea like limitation the latter must give way to the former.

11. In case *Telecom District Manager, Goa and Ors. v. V.S. Dampo & Co. and Ors.* supra it has been held that any dispute regarding the billing of the meter and a liability on a subscriber thereon when its correctness is disputed should be referred to the Arbitrator by the Central Government and that the Arbitrator's award shall be final and would be subject to only judicial review.

12. In the instant case though the Respondents appear to be grossly negligent in taking the required steps with promptness and within the period of limitation as delay has occurred because the instrumentality of the Respondents failed to act promptly and diligently, however, as held in *State of Haryana v. Chandra Mani and Ors.* supra in the case of the State it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making file pushing and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the state represents collective cause of the community and that it is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible.

If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest.

13. When the aforesaid position in law is read with the fact that the material question regarding jurisdiction of the court to decide the matter in the face of the objection taken by the Respondents that the suit was not maintainable because the remedy to the dispute as in hand lies u/s 7B of the Indian Telegraphs Act, is involved in the case and the decision whereon may render substantial justice to the parties, I am of the view that the discretion exercised by the Appellate Court in condoning the delay should not be interfered with.

14. As a result the Revision fails and is accordingly dismissed. Records be returned to the concerned Appellate Court forthwith. Parties are directed to appear before the learned Additional District Judge, Shimla on October 14, 1999.