
(2022) 11 KL CK 0096

In the High Court Of Kerala

Case No : C.M. Appl.No.1 Of 2019 In Review Petition No. 517 Of 2019 In
C.R.P.No.1313 Of 1990

Sahidulla

APPELLANT

Vs

Taluk Land Board, Perinthalmanna 679322

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Citation : (2022) 11 KL CK 0096

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : P.M.Poulose, S.L. Sylaja, M.Gopikrishnan Nambiar, K.John Mathai,
Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan

Final Decision : Dismissed

Judgement

C.S.Dias, J

1. The application is filed to condone the delay of 9934 days (27 years) in filing the review petition.

2. The first review petitioner has filed the affidavit in support of the application, inter alia, contending that the revision petition was disposed of on 17.01.1992. The certified copy of the order was applied on 12.07.2004. The first petitioner in the Civil Revision Petition ('C.R.P.') – the father of the first review petitioner – was conducting the C.R.P. The first review petitioner was employed in the Gulf. He returned to India only in 2010. After the disposal of the C.R.P., the first petitioner in the C.R.P. was suffering from depression. He recovered from his illness only in the year 2002. Some of the claims of the revision petitioners were allowed and some of them were rejected by this Court in the C.R.P. The first petitioner in the C.R.P. filed W.P.(C)No.22824/2003 before this Court. This Court admitted and stayed further proceedings before the Taluk Land Board. However, the writ petition was disposed of by this Court on 04.06.2018, holding that the errors and the irregularities in the proceedings can be subjected to revision or

review. The writ petition was disposed of leaving open all the issues to be agitated in a remedy available under law. After the disposal of the writ petition, the case bundle was misplaced. It was later found that the bundle was tied with another case bundle. Overall a delay of 9934 days has occurred in filing the review petition. There is no willful latches or negligence on the part of the petitioners in filing the review petition within the prescribed time period. There are valid grounds raised in the review petition. Hence, the application may be allowed by condoning the delay.

3. The respondents 2 and 3 – The Tahasildar and the State of Kerala – have filed a counter affidavit, inter alia, contending that there is absolutely no justifiable reason in the application to condone the inordinate delay of 27 years. The allegation that the first review petitioner was employed in the Gulf from 1979 to 2010, has no relevance. There is no material on record to prove that he was employed abroad. The review petitioners have admitted that the first petitioner in the C.R.P. had recovered from his illnesses in the year 2002. However, the review petition is filed only on 13.05.2019. Even though W.P. (C)No.22824/2003 was filed, the same was dismissed by this Court on 04.06.2018. A passing reference in the judgment cannot be taken as a ground to say that the Taluk Land Board lacks jurisdiction. The allegation regarding misplacement of the file etc., are incorrect. There is no bona fides in the application, which may be dismissed.

4. Heard; Sri. Krishnan Unni, the learned Senior Counsel appearing for the petitioners, the learned Government Pleader appearing for the respondents 1 to 3 and Sri.M.Gopikrishnan Nambiar, the learned counsel appearing for the fifth respondent.

5. The point is whether there is any justifiable reason to condone the delay of 9934 days in filing the review petition?.

6. A three Judge Bench of the Hon'ble Supreme Court in *University of Delhi v. Union of India and others* [2019 KHC 7261] has held thus:

"20. xxxxxxxxxxxxxxxxxxxx

Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation.

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[emphasis supplied]

7. In *Pundlik Jalam Patil v. Jalgaon Medium Project*, [(2008) 17 SCC 448], the

Hon'ble Supreme Court has observed as follows:

"17.The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights."

"29. It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

[emphasis supplied]

8. Again in *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* [(2012) 5 SCC 157] the Hon'ble Supreme Court has held thus:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If on the other hand, the explanation given by the application is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay".

[emphasis supplied]

9. The above position has been reiterated by the Hon'ble Supreme Court in *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others* [(2013) 12 SCC 649] by holding that:

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

[emphasis supplied]

10. Therefore, the law is succinctly laid down in the afore-cited precedents that,

while considering an

application for condonation of delay, a routine explanation is insufficient to indicate sufficient cause to justify the delay, which will depend on the back drop of each issue and will have to be weighed carefully by the Courts based on the fact situation. In the case of inordinate delay a strict approach is warranted because "delay defeats equity".

11. A reading of the order passed in C.R.P. would show that the C.R.P. was filed by five persons, including the review petitioners who are the revision petitioners 4 and 5 in the C.R.P.

12. The sheet-anchor of the petitioners in the present application is that the C.R.P. was being prosecuted by the first revision petitioner. It is admitted in the affidavit filed in support of the present application that the C.R.P. was disposed of on 17.01.1992, but the copy of the order was applied only on 12.07.2004. A writ petition was filed in the year 2003. There is absolutely no material to substantiate that the first revision petitioner was laid up due to depression and that it was he who was conducting the proceedings. The first review petitioner contends that he was in the Gulf from 1979 to 2010, which is also not established. There is nothing on record to prove what prevented the the second review petitioner, who was the fifth revision petitioner in the C.R.P from filing the review petition. The reasons stated in the affidavit are insufficient to condone the inordinate delay of 27 years. As the delay is grossly inordinate, I am obliged to take a strict view as laid down in Esha Bhattacharjee (supra). The right of the respondents have crystalised over the passage of nearly three decades. At this distance of time, I am not inclined to dislodge the crystalised rights of the respondents on the mere asking of the petitioners. I hold that there is willful latches and negligence on the part of the review petitioners in filing the review petition with a delay of 9934 days. The reasons stated in the application to condone the delay do not inspire this Court to condone the inordinate delay. The revision petition is stale.

The application fails and is dismissed.