
(2009) 10 AHC CK 0185
In the Allahabad High Court

Sarjoo

APPELLANT

Vs

Bhagwati Devi and Another

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 10 AHC CK 0185

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—It appears that a decree has been passed. The respondents have filed restoration application along with an application u/s 5 of the Limitation Act giving reason for the delay. Having regard to the explanation the trial court has condoned the delay. The restoration application is pending for consideration. The petitioner filed the revision against the order of the trial court allowing the application u/s 5 of the Limitation Act which has been dismissed by the impugned order.

2. Heard learned Counsel for the parties.

3. I do not find any error in the order.

4. The law of limitation is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

5. In the case of State of Haryana Vs. Chandra Mani and others, Apex Court held as follows:

It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of

delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, 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. 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 or 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. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Government conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorize the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case of condonation of delay.

6. In the case of Collector, Land Acquisition v. Mst. Kati Ji and Ors. reported in 1987 (13) ALR 306(SC), Hon'ble Supreme Court held as follows:

The Legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose of the existence of the institution of Courts. It is common

knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late
2. 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 merit after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational, common sense and pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side can not claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
6. It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
7. In *N. Balakrishnan v. M. Krishnamurthy* reported in (1998) 7 SCC 133, the Apex Court explained the scope of limitation and condonation of delay, observing as under:

The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy.

8. In *Smt. Prabha v. Ram Prakash Kalra* reported in 1987 (Suppl) SCC 338, the Supreme Court took the view that the Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay.

9. In *Vedabai alias Vijayanatabai Baburao Patil v. Shantaram Baburao Patil and Ors.* reported in 2001 (44) ALR 577 (SC), the Apex Court made a distinction in delay and inordinate delay observing as under :

In exercising discretion u/s 5 of the Limitation Act, the Courts should adopt a

pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other wise will be a relevant factor so the case calls for a more cautious approach....

10. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, Hon"ble Supreme Court held that discretion given by Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction.

11. In *Brij Inder Singh v. Kanshi Ram* reported in AIR 1917 PC 156, it was observed that true guide for a Court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.

12. In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, the Hon"ble Supreme Court held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

13. In *O.P.Kathpalia v. Lakhmir Singh* reported in 1984 AIR SC 1744, the Hon"ble Supreme Court held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

14. In *State of Haryana Vs. Chandra Mani and others*, Hon"ble Supreme Court considered large number of its earlier judgments including *Binod Bihari Singh Vs. Union of India*, *M/s. Shakambari and Co. Vs. Union of India*, , *Warlu Vs. Gangotribai* and another, *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, *Mata Din Vs. A. Narayanan*, and held that expression "each day"s delay must be explained", does not mean that a pedantic approach should be made and it must be applied in a rational common sense pragmatic manner."

15. In view of the above, the writ petition has no force and is dismissed.