
(2016) 05 DEL CK 0054
In the Delhi High Court
Case No : LA APP. 395 of 2015.

Shri Bhagwan Decd Thr Lrs APPELLANT
Vs
Union of India and another RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2016) 9 ADDelhi 101 : (2016) 230 DLT 212

Hon'ble Judges : Ashutosh Kumar, J.

Bench : Single Bench

Advocate : L.B. Rai, Advocate, for the Appellant; Jyoti Tyagi and Yeeshu Jain, Advocates and Sanjeev Sabharwal, Standing Counsel with Hem Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Kumar, J. (Oral) - CM Appln. No. 22092/2015

1. The aforesaid application is not pressed as fresh application bearing CM Appln. 2998/2016 has been filed, explaining the delay in preferring the appeal.
2. The application is dismissed as not pressed.

CM Appln. No.2997-2998/2015

1. The appellant/applicants have filed the aforesaid applications seeking condonation of delay of 753 days and 740 days respectively in filing and re-filing the appeal.
2. It has been submitted on behalf of the appellants/applicants that they came to learn about the judgment of the Trial Court from their neighbours who had filed respective appeals for enhancement of compensation. Thereafter, the appellant/applicants met their advocate and preferred the appeal.
3. For the delay in refiling the appeal, it is submitted that the appeal was

prepared and filed on 28.04.2012 vide diary No. 47171/2012 and the appeal was numbered as LA. APP.395/2015. The memo was however returned by the Registry to remove certain defects. The counsel for the appellant/applicants received the memo but the file got misplaced while shifting his office to a new location. As a result, there was a delay in refiling the appeal.

4. The aforesaid prayer of the appellant/applicants has been seriously opposed by respondent No.1. It is submitted on behalf of respondent No.1 that no sufficient much less any cogent reason, has been furnished by the applicants for condoning the delay of large number of days in filing and refiling the appeals. It is further submitted that the appellant/applicants have acted negligently, remained dormant and did not pursue their appeal and therefore they have forfeited their right of preferring the appeal against the judgment of the Reference Court.

5. The law of limitation, is based on the legal maxim "Interest Reipublicae Ut Sit Finis Litium" which means that it is for the general welfare that a period be put to litigation. If legal remedy is kept alive beyond the legislatively fixed period of time, it only generates dissatisfaction. The parties cannot be allowed to have an unbridled and unfettered free play in matters of timing of approaching the Court. The Courts, the Supreme Court asserted, must keep in mind while dealing with the limitation petition that there is a distinction between the delay for a plausible reason and delay because of inaction or negligence which deprives a party of the protection of Section 5 of the Limitation Act, 1963.

6. Without disputing the aforesaid well established principles regarding the law of limitation, there is another aspect, equally important, which cannot be lost sight of. The Supreme Court has, on number of occasions opined that the expression "sufficient cause" ought to be interpreted in a manner which subserves the cause of justice for which the institutions of justicing stand for. When a case with arguable points is shut out on prescriptions of limitation, it results in throwing out a good case at the threshold with the only necessary implication of injustice being perpetuated and justice being defeated. The expression "sufficient cause" cannot be interpreted in an iron frame. The expression "sufficient cause", in the words of the Supreme Court, is sufficiently elastic for the purposes of a meaningful interpretation. A serious note of caution has been sounded by Supreme Court against any pedantic or hyper technical approach in dealing with limitation petitions, more so, when stakes are high and there is availability of arguable points of law.

7. A Court cannot turn away its sight from the fact that no litigant benefits by approaching the Court late. Without any good reason, nobody would like to have his claim extinguished and more often than not, any good reason would dovetail into sufficient reason for approaching the Court after the period of limitation.

8. In *Ramlal v. Rewa Coalfields Ltd.*, AIR 1962 SC 361, the Supreme Court, while interpreting Section 5 of the Limitation Act, laid down the following proposition:

"In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

9. In *Collector, Land Acquisition, Anantnag v. Mst. Katiji*, (1987) SCC 107, the Supreme Court made a significant departure from the earlier judgments and observed:

"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian 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 for 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 realised 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 merits 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 pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot 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 mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that 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. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an evenhanded manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

10. In *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123, the Supreme Court expanded the scope and ambit of law of limitation and elucidated as follows:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

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 promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and

wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut 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. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

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. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

11. In *P.K. Ramachandran v. State of Kerala*, (1997) 7 SCC 556, the Supreme Court while reversing the order passed by High Court which had condoned 565 days delay in filing an appeal by the State against the decree of the Sub-Court in an arbitration application, observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. In *Vedabai v. Shantaram Baburao Patil*, (2001) 9 SCC 106, the Court observed that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises.

12. In *State of Nagaland v. Lipok AO*, AIR 2005 SC 2191, the Supreme Court has observed that justice-oriented approach should be adopted. Unless a pragmatic view is taken, injustice is bound to occur.

13. With respect to the aspect of condonation of delay, especially in land acquisition cases, the courts have adopted a rather liberal approach. The reason behind such liberality in condoning the delay in preferring appeal is primarily because, more often than not, the land-losers are persons who hail from villages and who are not aware of legal intricacies and the requirement of law.

14. This court is of the opinion that it would be really harsh on the appellant/

applicants if the delay in filing and refiling the appeal is not condoned as it would shut him out the benefits which might accrue to others who are similarly placed.

15. For the aforesaid reasons, the delay in filing and refiling the appeal is condoned but with the caveat that the appellants, in case of succeeding in the appeal, will not get interest over the period of delay in approaching the court.

16. The applications are allowed to the extent indicated above.

LA.APP. 395/2015 and 22091/2015 (Stay)

1. This is an appeal against the judgment dated 27.11.2009 passed by the ADJ, Delhi in LAC No.103/09/07 (Sh. Bharwan Decd. Thr. LRs v. Union of India and Anr.) whereby the reference court has assessed the market value of the acquired land at the rate of Rs.15,92,215.71 per acre.

2. It is submitted on behalf of the appellant that in LA.APP. No.784/2005 Jamna v. Union of India and Ors., a bench of Delhi High Court has enhanced the compensation amount of Rs.4,98,589/- per bigha and the land of the appellant in the present case is also covered by the aforesaid judgment as it is with respect to the same award and with respect to the land falling in the same village.

3. Issue notice to respondents.

4. Notice is accepted by Ms. Jyoti Tyagi and Mr. Sanjeev Sabharwal, learned advocates appearing for Union of India and respondent No. 2/DDA respectively.

5. Response to the appeal be filed in the Registry.

6. This appeal is admitted for hearing.

7. List this case in the category of "Regulars" as per its own turn.