
(1986) 10 AHC CK 0050
In the Allahabad High Court
Case No : Civil Revision No. 246 of 1986

Smt. Laxmi Devi	Vs	APPELLANT
U.P. State and Another		RESPONDENT

Date of Decision : 15-10-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 95
Limitation Act, 1963 — Section 5

Citation : AIR 1988 All 133 : (1987) 1 AWC 636

Hon'ble Judges : A.N. Dikshita, J

Bench : Single Bench

Advocate : B.N.L. Katiyar, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Dikshita, J.—This civil revision has been preferred against the order dt. 27-2-1986 by which the IV Additional District Judge, Kanpur City, has allowed the application condoning the delay occasioned in filing the appeal.

2. The brief facts are that a suit was filed by one Gur Prasad, later on substituted by the present applicant Smt. Laxmi Devi, for granting a decree of permanent injunction restraining the State of UP, and others from interfering with her peaceful possession of the land. The suit was decreed by the learned Additional Munsif, Kanpur City vide his judgment and decree dt. 26-3-1984. Copies of the judgment and decree were applied by the opposite parties on 28-3-1984. Such copies were ready on 23-4-1984 and were delivered on 24-4-1984. The appeal along with an application for the condonation of delay u/s 5, Limitation Act, was filed on 14-12-1984. A delay of 205 days which was caused was thus sought to be condoned. The court below while exercising powers u/s 5, Limitation Act, found the reason sufficient in not preferring the appeal within time and condoned the delay. It was alleged that in fact the delay was caused in view of the exchange of the correspondence between the District Government Counsel, the

Forest Department and the judicial department of the State Government. A detailed affidavit filed in support of the application for condonation of delay has been annexed as annexure-1 to the stay application filed by the opposite parties. The affidavit filed by the opposite parties chronologically sets forth the reasons which caused the delay in filing the appeal. Learned IV Addl. District Judge, Kanpur (City) found the cause sufficient for filing the appeal beyond the prescribed period. A discretion was exercised by the court below in allowing the application and condoning the delay in preferring the appeal beyond the time provided.

3. Feeling aggrieved against the judgment and order dt. 27-2-1986 passed by the learned IV Additional District Judge, Kanpur (City), the instant civil revision has been preferred by the plaintiff-applicant.

4. Learned counsel for the applicant and the learned Chief Standing Counsel appearing on behalf of opposite parties have been heard at some length.

5. It has been urged by the learned counsel for the applicant that the court below exercised discretion illegally and the delay of 205 days so caused in preferring the appeal was not satisfactorily explained. The submission is without merit. It is difficult to interfere with the finding of fact in regard to the cause being sufficient which has been found to be one by the court below and thus exercising discretion in condoning the delay. The affidavit filed in support of the application u/s 5, Limitation Act, clearly shows that due caution and care was exercised by the opposite parties in preferring the appeal. A chronological statement clearly sets forth that all efforts were made by opposite party No. 2, (Forest Department) and sincere efforts were made to do the needful. It is true that no separate standard is provided for the State for determining the sufficiency of the cause but the State cannot be put on the same level as an individual and where delay has been occasioned then reasons for such a delay have to be considered liberally. The affidavit in support of the application u/s 5 of the Act clearly sets forth that immediate steps were taken for filing the appeal. The learned District Government Counsel was approached who required certain formalities to be achieved and on completion thereof the permission for filing of appeal was advised to be obtained. For filing the appeal the permission of the judicial department of State Government is necessary. No doubt some time was taken in such exchange of correspondence but the opposite parties acted with all promptness in filing the appeal after such permission was accorded by the State Government. The court below found the reasons set forth in the affidavit filed in support of the application u/s 5, Limitation Act, to be sufficient. Having found sufficient cause existent the court below exercised the discretion and condoned the delay which was caused in filing the appeal. It was found that the cause was beyond the control of the opposite parties in not filing the appeal within the prescribed time. The opposite parties displayed bona fides and had exercised diligence as has been found by the court below by allowing the application under S, 5, Limitation Act. The question whether a sufficient cause

has been shown being a finding of fact it is absolutely within the discretion of the court below to condone the delay. In the case of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, , the Supreme Court has held that the existence of sufficient cause should receive a liberal construction so as to advance substantial justice.

"It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction. But it cannot also be gainsaid that the same consideration that will be shown by courts to a private party when he claims the protection of Section 5, Limitation Act, should be available to the State."

It is clear that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party."

The court below found that neither any negligence nor any inaction has been found. Even bona fides were found to be not wanting. It was found by the court below that the cause as shown is sufficient and reasonable in the circumstances of the case. The opposite parties were throughout acting in good faith. It is a matter of common knowledge that the State Government has to act in certain administrative manner and with clear norms to pursue the legal remedies. It cannot act and pursue a litigation like an individual as it has to rely on the working of its officers/officials and its counsel as well. The court is only required while considering the sufficiency of the cause whether the cause shown is reasonable looking to all the facts of the cases. However, such a question of the existence of the sufficient cause has to be decided on the facts and circumstances existing in a particular case. No doubt the consideration of the existence of a sufficient cause is a discretionary power with the court but such a discretion has to be exercised on sound judicial principle and not on the mere fancies or whims of the court. The court is not possessed of any arbitrary power while exercising this discretion nor can it act in a vague manner. It is also well settled that a party who has been successful in the litigation and has been granted an order in his favour cannot be deprived of such a right and advantage that has accrued to him. But at the same time his adversary cannot be deprived of challenging that order merely because a delay was caused which is found to be sufficient by the court. The person who is claiming to set at naught the fruits of success of a successful litigant may not be entitled to the condonation of delay as a matter of right it is only in such circumstance that the discretion of the court is exercisable for condoning the delay when it is found that the diligence and bona fides were manifest claiming such condonation. In the case of *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , the Supreme Court has held as under : --

"In construing Section 5 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."

It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it."

6. Learned counsel for the applicant placed reliance in the case of Revenue Divisional Officer, Vijayawada Vs. T. Laxminarayana, . This authority is of no avail to the applicant. It has been held by the court that no hard and fast rule can be laid while considering sufficiency of cause, Naturally routine and leisurely departmental consultations and communications as affording sufficient cause cannot be considered. But where a proposal to file appeal involves decision on a matter of policy at the highest executive level it may perhaps be justifiable for the courts to take circumstances into account whether the delay in filing the appeal should be condoned or not. In the instant case a decision on the recommendation of the District Government Counsel was to be taken. A decision to file an appeal was no doubt arrived at after examining the recommendations, still the District Government Counsel was of the view that no appeal should be preferred. This view was again communicated to the highest level which directed another District Government counsel to prefer an appeal which was instantly filed. There was thus a conflict of legal advice and this aspect is liable to be considered and is essential in considering the reasons for the delay caused in filing the appeal. The delay in such circumstances was no doubt caused but justifiably explained and condoned. In the case of Revenue Divisional Officer Vijayawada v. T, Laxminarayana (supra), the court has held as under : --

"Of course, Section 5, Limitation Act, empowers the Court to admit an appeal after the period of limitation prescribed therefore if the appellant satisfies the

Court that he had sufficient cause for not preferring the appeal within such period. The provision vests the Court with a discretion. But the discretion is a judicial and not an arbitrary discretion. Every party has a right to treat the decree of a lower Court as final and this substantive right to finality of a decree has always been considered to be of such a valuable kind that a party should not lightly be deprived of it. We cannot consider routine and leisurely departmental consultations and communications as affording sufficient cause to admit appeals preferred after the expiry of the period of limitation. But we do not mean to lay down any hard and fast rule. Naturally every case must be decided on its own facts. For example, where a proposed appeal involves a decision on a matter of policy at the highest executive level it may perhaps be justifiable for a Court to take that circumstance into account in considering whether delay in filing the appeal should be condoned. Again, where there is conflict of legal advices where advice from the top-most legal advisor is considered essential delay in filing an appeal may perhaps be justified. But as observed by us, it is difficult to treat delays occurring from routine and leisurely inter departmental consultation and communication as affording sufficient cause to admit a time-barred appeal."

7. An interference in the exercise of discretion may not be amenable in revision. In the case of *Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others*, , it has been held that the High Court would not enter into findings of fact on the question of sufficient cause so long as it has been arrived at in consonance with law. But a revision may be maintainable where it is found that the Court has come to its conclusion on the wrong view of law or on the basis of no evidence. It then acts with material irregularity in the exercise of its jurisdiction.

8. Learned counsel for the applicant then urged that the opposite parties have failed to establish each day's delay which has been caused in the case. The submission has no merit. A chronological statement of fact explaining the period has been clearly shown in the affidavit and has been accepted as such by the Court below. In view of the above discussion it is clearly found that the Court below found the cause sufficient and had properly exercised the discretion in condoning the delay.

9. I do not find any jurisdictional error or material irregularity having been committed by the Court below. This civil revision being ill-merited deserves to be dismissed.

10. In the result, the revision fails and is hereby dismissed with costs.