

(2012) 03 CAL CK 0067
In the Calcutta High Court
Case No : C.O. No. 602 of 2012

Sri Amalendu Kumar Bera and Others	APPELLANT
Vs	
The State of West Bengal	RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2012) 3 CALLT 310

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Soumen Kumar Dutta, for the Appellant; S.N. Bhattacharjee and Mr. Debabrata Kole, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the decree-holders/ opposite parties and is directed against the order dated February 3, 2012 passed by the learned District Judge, Purba Medinipur in Civil Revision No. 1 of 2011 arising out of the Order No. 18 dated August 17, 2010 passed by the learned Civil Judge (Junior Division), 1st Court, Contai in Misc. Case No. 18 of 2010 u/s 47 of the CPC in Title Execution Case No. 27 of 2009.

2. The Title Suit No. 483 of 1967 was decreed on contest on August 7, 1969 against the defendant/State declaring title of the plaintiff in the suit property and also granting permanent injunction against the defendant/State with regard to possession of the plaintiff in the suit property as described in the schedule of the plaint. The State of West Bengal preferred an appeal being Title Appeal No. 653 of 1969 and the said appeal was dismissed on contest on August 13, 1970 thereby affirming the judgment and decree passed by the concerned learned Munsif and an application for execution of the said decree was filed in 2009 being the Title Execution Case No. 27 of 2009 and in that application for execution, the

State of West Bengal filed an application u/s 47 of the Code of Civil procedure. The said application u/s 47 of the CPC was converted into a misc. case being Misc. Case No. 18 of 2010 which was dismissed on contest on August 17, 2010. Another application u/s 47 of the C.P.C. was filed subsequently and that application was rejected by the Executing Court. Thereafter, being aggrieved by the order dated August 17, 2010, the State of West Bengal preferred a civil revision being Civil Revision NO.1 of 2011 along with an application u/s 5 of the Limitation Act for condonation of delay and that application u/s 5 of the Limitation Act was allowed by the Revisional Court, that is, the learned District Judge, Purba Medinipur by the impugned order. Being aggrieved, this application has been preferred by the decree-holders.

3. Now, the question is whether the learned District Judge is justified in allowing the said application u/s 5 of the Limitation Act.

4. Upon hearing the learned Counsel for the parties and on perusal of the materials-on-record, I find that above-noted facts are not in dispute. The application u/s 5 of the Limitation Act was filed almost after lapse of 1 year and 3 months from the date of dismissal of the said Misc. Case u/s 47 of the Code of Civil Procedure. The learned District Judge did not make any clear finding as to the sufficiency of the cause for the delay, but he has simply recorded the decisions referred to and concluded that the discretionary power has to be exercised within reasonable grounds, known to law in a systematic manner informed by reasons.

5. The State/opposite party herein filed a rejoinder of the application u/s 5 of the Limitation Act enclosing the grounds as to the cause for the delay in preferring the said revisional application before the learned District Judge. In the original application u/s 5 of the Limitation Act, the petitioner has stated the ground that Sri Sadhan kumar Roy Chowdhury, Senior Advocate, was appointed and when he refused to act on behalf of the State, Sri S.N. Bhattacharya, learned Advocate was appointed for the State.

6. Mr. Soumen Kumar Dutta appearing for the petitioners submits that this is not at all sufficient ground as no date has been mentioned when Sri Sadhan Roy Chowdhury was appointed and when he refused to act on behalf of the State and also when Sri S.N. Bhattacharya, learned Advocate was appointed.

7. Anyway, I find that a rejoinder was filed by the State/opposite party herein in support of the application u/s 5 of the Limitation Act contending that as the decision is required to be taken at various levels, which causes the delay. The opinion of the DM, learned LR, is required to be obtained and thereafter an advocate is to be appointed and this causes the delay.

8. Mr. Dutta appearing on behalf of the petitioner has referred to the following decisions in support of his contention that the delay should not be condoned:-

(i) Union of India & Ors. v. Nripen Sarma reported in AIR 2011 SC 1237 and

thus, he submits that where an appeal is barred by limitation of 114 days and where no sufficient cause is shown for condonation of the delay, the appeal is liable to be dismissed on the ground of delay.

(ii) Amar Nath and Others Vs. Mul Raj (deceased) represented by his legal representatives and Others, and thus, he submits that sufficient cause is not defined in the limitation Act. It means a cause which is beyond the control of the party invoking the aid of Section 5. The test, whether or not a cause is sufficient, is to see whether it is a bona fide cause, inasmuch as nothing shall be taken to be done bona fide or in good faith which is not done with due care and attention.

(iii) Sandhya Ghose & Ors. v. Raghunath Dutta & Ors. reported in 2011 (1) CHN (Cal) 385 and thus, he submits that when there is inaction on the part of the petitioners for a long period of 15 years - valuable right obtained due to lapse of reasonable time should not be disturbed unless there is a proper justification for the delay. The said judgment was delivered by this Bench where there was delay of 15 years. Both the parties adduced evidence and the concurrent findings were not interfered with by this Bench. So, this decision is not applicable in the instant case.

(iv) Director of School Education, West Bengal & Ors. v. Tarun Kumar Ghosh & Ors. reported in 2010 (4) CHN (Cal) 76 and thus, he submits that when the delay was not explained and no step from the Government against the concerned DI for sitting idle over the issue, inconsistent, incorrect and suppressive statement made out in the pleading by the Government, the application for condonation of delay and also the appeal are liable to be dismissed.

With due respect to Mr. Dutta, I am of the view that this decision will not be applicable inasmuch as there is no question of inconsistent, incorrect or suppressive statement made out in the pleading by the Government.

(v) Mr. Dutta has lastly referred to an unreported decision of Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. delivered by the Hon'ble Apex Court (unreported) particularly paragraph No. 12 and 13 and thus, he submits that when there is no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice. Thus, he submits that in the instant case, there is no such occasion. The inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. The condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. So the delay cannot be condoned.

9. On the other hand, Mr. S.N. Bhattacharya appearing on behalf of the State has referred to the following decisions:-

1 State of Haryana Vs. Chandra Mani and others, and thus, he submits that the expression sufficient cause should, therefore, be considered with pragmatism in

justice oriented approach rather than technical detection of sufficient cause for explaining every day's delay. The State is an impersonal machinery working through its Officers and servants and as such the delay of 109 days has been explained and it is a fit case for condonation of delay.

2. State of Nagaland Vs. Lipok AO and Others, and thus, he submits that the delay of 57 days was condoned, and

3. He has also referred to decision of O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others, particularly the paragraph No. 30 and thus, he submits that the delay of 6 years for substitution was condoned when the application was filed within the period of limitation from the date of knowledge.

10. Having considered the decisions referred to above and the materials placed by the State/opposite party in support of the condonation of delay, I find that the State has taken the contention that the delay was due to the fact that Mr. Sadhan Roy Chowdhury was appointed and then he was changed, thereafter Mr. S.N. Bhattacharya was appointed. The State is required to consult DM, learned LR and files are to be moved from one office to another office and as such the delay occasioned. Now, the defence stance of the State is that the suit property had already been vested in the State after lapse of the period of tenancy created in favour of the predecessor-in-interest of the decree-holders and as such appropriate step was taken u/s 47 of the CPC when the execution case was filed after the lapse of 39 years from the date of the decree. When, prima facie, the suit property had already been vested and the execution of the decree was to be filed within 12 years from the date of the decree, prima facie, there is a scope to consider the case.

11. Having regard to all the materials-on-record, I find that the decisions referred to on behalf of the petitioners are all related to appeal matters either under the provisions of the Letters Patent or of the CPC except one. The Apex Court has observed that in respect of condonation of delay liberal attitude should be adopted when there was no gross negligence or deliberate inaction or lack of bona fide has occasioned on the part of the State. The decision of Amar Nath (supra) also indicates that the words "sufficient cause" should receive liberal construction so as to advance substantial justice. The instant case has arisen out of an execution proceeding. When no negligence nor inaction nor want of bona fides, is imputable to a party for the delay in filing an appeal, it would constitute sufficient cause. In the instant case, there is no such occasion rather, by filling the rejoinder, the State has stated that in order to take a decision on behalf of the State several offices or departments are to be concerned and as such there was delay in taking prompt action and this has been clearly stated in the decision of State of Haryana (supra), State of Nagaland (supra) and Office of the Chief Post Master General & Ors. (supra) that the day-to-day delay is not to be explained. In such a situation, this Court should sparingly interfere with the discretionary power exercised by the Court on the ground that another view than the one taken by the revisional Court is a possible view. I am also of the view

that the liberal approach adopted by the Revisional Court should not be interfered with in exercising the jurisdiction of Superintendence under Article 227 of the Constitution.

12. Accordingly, I am of the view that in exercising the power under Article 227 of the Constitution, the impugned order should not be set aside.

13. The application is, therefore, dismissed.

14. Considering the circumstances, there will be no order as to costs.

15. The above findings are for the purpose of disposal of this application and the revisional Court shall dispose of the revisional application independently in accordance with law.

16. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.