

(2014) 02 TP CK 0069
In the Tripura High Court
Case No : CRP No. 59 of 2013

Sri Manik Bhowmik VsThe State of Tripura and Others

Date of Decision : 19-02-2014

Acts Referred:

Citation : (2014) 02 TP CK 0069

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : D.C. Roy, for the Appellant; S. Chakraborty, Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—The instant revision petition is filed by the petitioner who is the plaintiff in T.S. 10 of 2011, which was decreed by the learned Civil Judge, Junior Division, Sabroom, South Tripura, challenging the order dated 02.05.2013 passed by the learned District Judge, South Tripura, Udaipur in T.A. No. 23 of 2012 allowing the prayer for condoning the delay of 108 days in preferring the appeal against the judgment and decree dated 16.4.12 and 18.4.2012 respectively passed by the learned Civil Judge, Junior Division, Sabroom, South Tripura in Title Suit No. 10 of 2011. Heard Mr. D.C. Roy, learned counsel appearing for the plaintiff petitioner as well as Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the state respondents.

2. As agreed to by the learned counsel for the parties and considering the nature of order as impugned, the matter is taken up for final disposal.

3. Mr. Roy, learned counsel for the petitioner while urging for setting aside the order, dated 2.5.2013, wherein the learned District Judge allowed the prayer for condonation, would contend that the learned District Judge failed to consider the application for condonation of delay in its true sense. He also submits that though the state defendants failed to explain the delay, then also the learned District Judge allowed the prayer for condonation of delay which is wholly unwarranted and against the basic principle of law. According to him, the delay

has to be explained in a reasonable and plausible manner which was totally absent in the application, Annexure-B to the instant petition filed by the State defendant respondents. According to him, the learned Court also did not properly consider the objection filed by the plaintiff respondents against the prayer for condonation of delay. In support of his aforesaid contention, he has placed reliance on a decision of the Apex Court in Balwant Singh (Dead) Vs. Jagdish Singh and Others, wherein the Apex Court noted, inter alia,

The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behavior of a common prudent person on the person on the part of the applicant, the court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.

4. He has also placed reference on the decisions of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., and Commissioner of Wealth Tax, Bombay v. Amateur Riders Club, Bombay, : 1994 Supp. (2) SCC 603 wherein the Apex Court while dealing with the application for condoning the delay stated, inter alia,

Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

5. Mr. Chakraborty, learned Addl. Govt. Advocate while refuting the submission of Mr. Roy would contend that the delay has been properly explained in Paragraph-2 of the application (Annexure-B to the instant application) where it is specifically stated that the judgment was passed on 16.4.2012 by the learned Civil Judge, Junior Division, Sabroom, South Tripura in Title Suit No. 10 of 2011 and an application was made for obtaining certified copy of the judgment on 24.4.2012 and the same was ready for delivery on 27.4.2012 and thereafter, the Govt. lawyer sent the file to SDM, Sabroom for taking necessary steps and the SDM, Sabroom placed the file before the D.M. & Collector, South Tripura District on 15.5.2012. Then the Govt. pleader received the file on 21.5.2012 for giving his

views as to whether the appeal would be preferred or not and thereafter, the Govt. pleader went outside Tripura for his treatment and he was also not in a position to prepare the appeal in time. However, ultimately, the Govt. pleader prepared the appeal and sent the same with a request for vetting the memo of appeal from the L.R. and on 2.7.2012 the same was sent to the office of the D.M. & Collector. The file was again placed on 10.7.2012 before the L.R. Secretary from the office of the D.M. & Collector. On 17.7.2012 the memo of appeal was vetted and it was sent to the office of the D.M. & Collector on 23.7.2012. Thereafter, the file was received on 30.7.2012 by the office of the Govt. pleader and then the appeal was preferred. Hence, it cannot be said that the delay was not properly explained.

6. He has also submitted that the Government cannot be treated like an individual litigant being the Govt. is machinery impersonal and for Government, certain amount of latitude is permissible. In support of his aforesaid contention, he has placed reliance on a decision of the Apex Court in *State of Haryana Vs. Chandra Mani and others*, wherein the Supreme Court observed:

In litigations to which the Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Govt. are lost for such default, no person is individually affected; but what, in the ultimate analysis suffers is public interest. The decision of Govt. are collective and institutional decision and do not share the characteristics of decision of private individual. The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant, must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Govt. makes out a case where public interest was shown to have suffered owing to acts of fraud or bad fate on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assailing what constitutes sufficient cause for purposes of Sec. 5, it might, perhaps, be somewhat unrealistic to exclude from consideration that go into the judicial verdict. These factors which are peculiar to and characteristics of the functioning of the Government. Govt. decisions are proverbially slow encumbered as they are, by a considerable degree of procedural redtape in the process of their making. A certain amount of latitude is therefore, not impermissible. It is right said that those who bears responsibility of Govt. must have a little play at the joints. Due recognition of this limitation on Governmental functioning of course, within reasonable limit--is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Govt. and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental decision making process. The delay of over one year was accordingly condoned.

7. He has also placed reliance in the *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, wherein the Apex Court looking into the facts and

circumstances of that case held:

We are of the opinion that sufficient cause has been made out by the petitioner which has persuaded us for condoning the delay in preferring the appeal, as we are of the opinion that dismissing the appeal on technical ground of limitation would not, in any way, advance the interest of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but 100 of other persons who are stated to be senior to the respondents.

8. He has further placed reliance on the decision of the Apex Court in *State of Nagaland Vs. Lipok AO and Others*, wherein the Apex Court noted, *inter alia*,

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.

(Emphasis supplied).

9. Mr. Chakraborty has finally contended that an individual can file an appeal by his own decision, but in case of Govt., it has to follow some procedures and for following procedure, file goes from one table to other tables of the officers and in the instance case, the delay was only 108 days and for such delay, substantial explanations have been given though day to day explanation has not been given and every day explanation by way of mentioning date is also not required.

10. This Court has gone through the impugned order wherein the learned trial Court specifically mentioned that delay caused because of the formalities to be observed by the Government in preferring the appeal and also due to the absence of the Govt. pleader for his own illness. As the Govt. has to act through somebody like the officers and its pleaders, in that case, the Govt. is entitled to certain latitude and the learned trial Court did not commit any wrong while exercising its discretion and by this time, it is settled that the discretion has to be exercised for rendering justice, but not to cause injustice. This Court has also gone through the objection filed by the plaintiff-respondents before the trial court. In objection, nowhere the plaintiff respondents denied the ground of illness of the Govt. pleader. This Court has taken note of the case laws cited by the parties. Almost in all the cases, the Apex Court stated that if the delay has been explained reasonably and satisfactorily, then the said delay should be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In the instant case, it cannot be said that the delay which was caused in preferring the appeal is an intentional one. According to this court, the learned trial Court did not commit any error, allowing the prayer for condonation of delay.

Thus, no interference as sought for by the plaintiff petitioner is called for. Accordingly, the instant revision petition is dismissed. No order as to costs.