

(2009) 08 JH CK 0080

In the Jharkhand High Court

Case No : Appeal From Appellate Decree No. 26 of 2008

State of Bihar Now Jharkhand and Others

APPELLANT

Vs

Basudeo Lal Gupta

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4
Limitation Act, 1963 — Section 5

Citation : AIR 2010 Jhar 39 : (2010) 5 RCR(Civil) 938

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Shamim Akhtar, G.P.I, for the Appellant; Kundan Kumar Ambastha, for the Respondent

Judgement

M.Y. Eqbal, J.—This second appeal has been filed by the defendant-appellant, the State of Jharkhand, against the judgment and decree dated 10.10.2002 passed by VIIth Additional District Judge, Hazaribagh in Title Appeal No. 51/99 affirming the judgment and decree dated 7.8.99 passed by Munsif Koderma decreeing Title Suit No. 67/88. The plaintiff-respondent filed the aforementioned Title Suit No. 67/88 for declaration of title and possession over the suit land and in the alternative for recovery of possession.

2. The instant second appeal filed by the appellant is bared by limitation and the period of delay is 1847 days, for which a separate application being I.A. No. 400/2008 has been filed u/s 5 of the Limitation Act.

3. In the limitation petition it is stated that title appeal in the court below was being conducted by one Sri Kedar Nath Sahay, Additional Government Pleader, Hazaribagh who died immediately after the appeal was disposed of but the result of the appeal was not communicated to the appellant. It is stated in the petition that the plaintiff-respondent also did not disclose this fact for so many years and maintained silence. It was only in December, 2006 the plaintiff-respondent disclosed this fact that the appeal filed by the appellant has been dismissed.

Thereafter the appellant started searching of the file and ultimately with great difficulty it was found that the case was being conducted by Mr. Kedar Nath Sahay, the then Additional Government Pleader. After getting the file the appellant requested the Government Pleader, Hazaribagh to obtain the certified copy of the judgment and decree. After obtaining certified copy of the judgment and decree the same was sent to the Deputy Commissioner, Hazaribagh and from there to the Government. The Law Secretary, Jharkhand, Ranchi then sent the file for legal opinion to the office of the Advocate General, from there legal opinion was granted. Accordingly, on receipt of the file from the office of the Advocate General, the instant appeal has been filed.

4. Notices were issued in the limitation matter. The plaintiff-respondent appeared and filed reply to the limitation petition. It is stated that no plausible explanation has been given for condoning such an inordinate delay. The respondent stated that Additional Government Pleader died after pronouncement of the judgment. It is stated that the appellants are fully aware about the disposal of the appeal by the lower appellate court.

5. We have heard Mr. Shamim Akhtar, learned Government Pleader and Mr. Kundan Kumar Ambastha, learned Counsel appearing for the respondent.

6. Mr. Shamim Akhtar, learned Government Pleader, submitted that the appellants were prevented by sufficient cause from preferring the appeal in which substantial questions of law are involved. Learned Counsel submitted that it is a Government land and the courts below have failed to take into consideration that the suit land was settled in the year 1947 in favour of M/s Mineral Development Corporation Ltd. and the settlement was annulled in a proceeding u/s 4(h) of the Bihar Land Reforms Act, 1950 and the Government took possession of the land. Learned Counsel submitted that the appellant-state of Jharkhand will suffer substantial loss and irreparable injury, if the limitation in filing the appeal is not condoned.

7. On the other hand, learned Counsel appearing for the respondent submitted that such an inordinate delay cannot be condoned merely because the appellant is the State. Learned Counsel submitted that some incorrect statements have been made in the limitation petition regarding the death of the Additional Government Pleader, who was conducting the appeal and on that ground alone the prayer for condonation of delay should be refused. Learned Counsel relied upon a decision of the Supreme Court in the case of *Pundlik Jalam Patil v. Exe. Eng. Jalgaon Medium Project* 2009 SCR 104.

8. In the decision relied upon by the counsel for the respondent in the case of *Pundlik Jalam Patil v. Exe. Eng. Jalgaon Medium Project* 2009 SCR 104 the Supreme Court in the concluding paragraph observed:

25. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation

Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned Counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings.

26. For the aforesaid reasons, we hold that the High Court gravely erred and exercised its discretion to condone the inordinate delay of 1724 days though no sufficient cause has been shown by the applicants. It is for that reason, we interfere with the decision of the High Court and set aside the same. The appeals are accordingly allowed without any orders as to costs.

9. Admittedly, there is inordinate delay in filing the appeal. But the fact remains that the conducting lawyer Mr. Kedar Nath Sahay died and the disposal of the appeal was not communicated in writing to the appellant-State.

10. It is true that a party seeking condonation of delay in filing the appeal is a State or a private party is irrelevant. If there are sufficient cause then delay may be condoned.

11. It is well settled that the legislature has conferred power to the court u/s 5 of the Limitation Act to condone the delay in order to enable the court to do substantial justice to the parties by disposing of the matter on merit. 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. Refusing to condone the 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.

12. The supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, held that 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. Their Lordships further held that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

13. In the case of State of Jammu and Kashmir Vs. Dr. Ashok Kumar Gupta and

others, the Supreme Court in the matter of condonation of delay in filing the appeal by the State observed:

The Division Bench of the High Court was not inclined to condone the delay on the ground that proper explanation had not been given. We have considered the reasoning of the learned Judges. On the facts and circumstances, we think that the explanation given for the delay in filing the appeal is proper. It is notorious and court would take judicial notice that no one would take responsibility for the delay and in the process of leisurely consultations between different departments or at different levels in the same department the limitation to file the appeal gets barred. Refusal to condone the delay feeds public injustice and a premium for lethargy and encourages mischief. Applying the pragmatic approach, the explanation for the delay needs to be considered and the cause of justice advanced and consideration angulated and accordingly, considered from that perspective the delay gets condoned. The matter is remitted to the High Court for fresh disposal on merits according to law.

14. In the case of Santimay Dey Vs. Suraiya Properties (Pvt.) Ltd. and Others, the Supreme Court held that a rule of practice cannot be exalted into a rule of limitation because a rule of practice can only indicate how discretion should be exercised by the court in determining whether, having regard to the circumstances of the case, the party concerned has been guilty of laches or undue delay. In other words, by treating a rule of practice as a rule of limitation, the court cannot reject a petition for condonation of delay without considering whether in fact the petitioner is guilty of laches or undue delay.

15. Coming back to the instant case, as noticed above, there has been laches and negligence on the part of the officers of the State of Jharkhand in prosecuting the case but the same was not deliberate and intentional. In the event delay is not condoned, there shall be serious loss and irreparable injury inasmuch as there appears to be merit in the appeal. At the same time, undisputedly, the Government Pleader, who was conducting the appeal, died and because of his death the result of the appeal was not communicated to the appellants. For the ends of justice, it is fit and proper to allow the application and condone the delay infilling the appeal.

16. Hence, I.A. No. 400/2008 is allowed and the delay in filing the appeal is condoned. However that shall be subject to payment of cost of Rs. 10,000/-, which shall be deposited with the Jharkhand State Legal Services Authority.