

(1998) 07 P&H CK 0157

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 13409 of 1997

State of Haryana

APPELLANT

Vs

Balwant Singh

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2000) 1 CivCC 66 : (1998) 120 PLR 506 : (1999) 1 RCR(Civil) 231

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : R.K. Arora, for the Appellant; C.B. Goel, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—By this common order, I propose to dispose of applications filed u/s 5 of the Limitation Act in Civil Revision No. 5138 to 5154 of 1997.

2. Before discussing the merit or otherwise of the applications u/s 5 of the Limitation Act, reference to some facts giving rise to the present revision would be necessary.

3. Owners of the land whose land was acquired by notification u/s 4 of the Land Acquisition Act were awarded compensation vide award dated 5.7.1978. References were preferred by the claimants where the amount was enhanced against which Regular First Appeals were preferred by the claimants. Vide judgment dated 29th of March, 1983 passed in R.F.A. No. 1571 of 1982 the following reliefs were given to the appellants:-

"For the reasons recorded above, all these appeals were allowed with costs to the extent that the claimants would be entitled to market value of the acquired land at the rate of Rs. 19/- per Sq. yard. On the enhanced compensation, the claimants will be entitled to 15 per cent solatium and 6 per cent interest on the total enhanced compensation payable from the date of taking over of the land, till payment thereof. However, the enhanced compensation will not exceed the

amount on which court fee has already been paid."

It has come on record that the said judgment has become final inter se the parties.

4. Based on this judgment the claimants filed execution in which orders were passed against the State. During the pendency of these execution petitions, the State of Haryana did not file any objection petitions but on 24th of May, 1997 took a verbal objection that the solatium and interest was payable only on the increased amount and not on the total amount of compensation awarded by this Court. In compliance with the orders of this Court as afore noticed, the learned executing Court vide its orders dated 24.5.1997 dismissed the said verbal objection. It is this order which has been impugned in the present revision petition.

DISCUSSION ON APPLICATIONS FOR CONDONATION OF DELAY:

5. The revisions which have been preferred against the afore stated order were barred by time when filed. Consequently C.M. No. 13409 of 1997 was filed for condonation of 104 days in filing this revision.

The application was contested by the respondents.

6. The application for condonation of delay states no plausible reason much less discloses sufficient cause and bonafide action on the part of the State, which would justify condonation of delay of 104 days in filing the present revision petition. The application consists of two paragraphs and in order to avoid any ambiguity, it would be appropriate to re-produce the said paragraphs, which according to the learned counsel for the State discloses sufficient cause for condonation of delay.

"... 2. That the order dated 24.5.1997 has been passed in this case alongwith 18 other similar cases. However, the dealing official reported the matter only in two cases. Therefore, the certified copy of the order dated 24.5.1997 in this case and also in other similar 17 cases could not be obtained.

3. That after having obtained the certified copy in this case, the matter was referred to the L.R. & Secy., to Govt. Haryana issued instruction to Advocate General, Haryana on 8.10.1997 which was received in the office of appellant on 14.10.1997."

7. What action was taken by the State from 24th May, 1997 onwards has not been stated. Not applying for the certified copy of the judgment is certainly no ground for condonation of delay per se. It is admitted that there was a common order passed in all the cases and the certified copy of the order had already been obtained in the other two matters. It is also conceded that the revision in other two connected matters have not found favourable result to the State. No explanation has been put forward by the State to show as to why it could not prefer the revision earlier with the application for exemption from filing certified

copy of order, which is permissible in law and specially when the copy of the order was available with the State. Even the attitude of the State of taking verbal objections before the learned Additional District Judge is sufficiently indicative of the negligent attitude adopted by the State in all these cases. Once the remedy against the impugned order becomes barred by time, a definite right accrue to the person in whose favour the order had been passed. To take away such a right on mere asking of the State would amount to doing injustice to the litigant who awaits payment of compensation amount in lieu thereof. The provisions of Limitation Act cannot be given complete go by though the state may be entitled to some liberal view in the matter relating to condonation of delay because of some administrative routine in various department of the government but such delay must have some relation to the sufficiency of cause which is rendered on record for condoning delay. Sufficient or reasonable cause is totally absent in the present case.

8. The application lacks material particulars itself as well as reasonable explanation in regard to the dealing of the matter in department for a considerable period of more than six months. It appears from the record that Court fee was purchased on 28th November, 1997, the application u/s 5 of the Limitation Act was drafted on 25.11.1997, grounds of revision have been prepared on 5.11.1997, and memo of parties was typed on 24.11.1997 but revision was filed in the Registry of the High Court on 6.12.1997.

9. Another important factor which cannot be ignored that this application u/s 5 of the Limitation Act for condonation of delay is not supported by a proper affidavit. The affidavit which has been filed in support of this application was typed and attested on 24.10.1997 while application itself was typed on 25.11.1997. This means the application and its contents were not known to the person who had sworn the affidavit in support thereof on 24th October, 1997. The above facts shows the callousness and negligence with which the matter was dealt with by all concerned at the relevant time. This considerable delay of 104 days has given a definite benefit to the respondent which in the facts and circumstances of the case cannot be taken away in routine manner.

10. At this stage it may be appropriate to make reference to a recent judgment of Hon"ble Supreme Court rendered in the case of P.K. Ramachandran v. State of Kerala and Anr. J.T. 1997 (8) S.C. 189 where the Hon"ble Supreme Court observed in unambiguous terms the settled principles governing the condonation of delay in the following manner.

"Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall

stand dismissed as barred by time. No costs."

xx xx xx

The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent State for condonation of the inordinate delay of 565 days.

11. Further in a judgment of this Court in the case of Punjab State etc. Vs. Onkar Nath and Another, while declining to condone the delay, it was held as under:-

"Following the judgment of the Hon"ble Supreme Court in the case of P.K. Ramachandran (supra), this Court in the case of Gram Panchayat Malot v. Prem Singh, CM. No. 4751 and 4852-C of 1997 and RSA No. 2873 of 1997, (reported as Gram Panchayat Vs. Prem Singh,)declined to condone the delay in filing the appeal and dismissed the application preferred by the appellant u/s 5 of the Limitation Act in that case. Furthermore, the Court in the case of Mauria Udyog and Ors. v. Shubh Karan and Anr., R.S.A. No. 2340 of 1996, decided on 10.10.1996 held as under:-

"The term "sufficient cause" must receive liberal meaning and has to be incorporated so as to introduce the concept of reasonableness as it is understood in its general connotation. Certainly Limitation Act is a substantive law and its provisions have to be adhered to in a manner that once a valuable right accrues in favour of one party, as a result of unexplained sufficient or reasonable cause and directly as a result of negligence, default or inaction of the other party, such a right cannot be taken away lightly and in a routine manner."

12. Now reverting back to the facts of the present case, it is clear that the delay in filing the present appeal has not been explained properly and satisfactorily. Furthermore, the conduct of the department even after May, 1997, reflects total negligence and irresponsible attitude on the part of the official concerned. There is no explanation on record as to why the appeal was not filed for the first time accompanying the application u/s 5 of the Limitation act in October, 1995 when it was returned in May, 1997 itself. The preferential treatment to the State in terms of State of Haryana Vs. Chandra Mani and others, pre-supposes the bonafide act and responsible attitude on the part of the state and its officers. A remedy when gets barred by time, a definite right is vested to other side and the State cannot be permitted to take away that right so lightly and specially keeping in view the fact and circumstances of the present case.

13. Having cogitated over this matter seriously, I have no hesitation in coming to the conclusion that the applicant has miserably failed to show any sufficient cause much less reasonable cause for condonation of delay of 104 days in filing the present revision petition. As already noticed, the delay has resulted because of the negligent and irresponsible attitude adopted by various functionaries of the

State.

14. Consequently, the application for condonation of delay u/s 5 of the Limitation Act is here dismissed.

15. However, in the circumstances, it would be expected from the State that it would take action against all the erring officials/officers in accordance with the rule, if it so desires.

C.R. No. 5138 of 1997.

16. Since the application for condonation of delay in filing the revision petition itself has been dismissed, the revision does not survive for consideration.