

(1976) 03 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : S.C.A. No. 2 of 1976

State of Himachal Pradesh

APPELLANT

Vs

Lt. Vijay Singh

RESPONDENT

Date of Decision : 17-03-1976

Acts Referred:

Constitution of India, 1950 — Article 133
Limitation Act, 1963 — Section 12(2), 5

Citation : (1977) ShimLC 171

Hon'ble Judges : R.S. Pathak, C.J; D.B. Lal, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant;

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This is an application for a certificate of fitness under Article 133 for an appeal to Supreme Court. The first appeal arose in a land acquisition proceeding wherein the District Judge gave his award on 18-12-1973 and the State Government felt aggrieved of the award because according to it the compensation was unduly enhanced and the State was not liable to pay it. The appeal in the High Court was filed beyond the period of limitation and a preliminary objection was taken that the appeal should be dismissed as time barred. The Appellants took assistance from Section 12(2) of the Limitation Act in the first instance, and sought for credit of the time between 19-12-1973 when according to them a copy of the judgment was applied for and 17-8-1974 when a certified copy of the judgment was received by them. In the alternative the Appellants called for their aid Section 5 of the Limitation Act and sought for the condonation of delay on sufficient grounds. It was stated that the District Attorney Chamba applied on 19-12-1973 for a copy of the judgment. Thereafter on 28-6-1974 he was sent a typed copy of the judgment by the Respondents for making payment in execution proceedings. The District Attorney then issued a reminder on 16-7-1974 for a certified copy for which he had applied on

19-12-1973. The certified copy was not received by him and he made a fresh application for a copy on 14-8-1974. This copy was supplied to him on 17-8-1974 but he filed the appeal on 9-10-1974 and that too with great deficiencies which he made good on 11-11-1974. The contentions of the Respondents were that firstly the copy was not applied for on 19-12-1973 and if it was so applied it was addressed to the Copying Agency of the Court of the Additional District Judge, Dharamsala which Court never maintained a Copying Agency. Similarly the reminder was sent to that Copying Agency on 16-7-1971 which was again a reminder to a wrong Court because no Copying Agency was maintained by the Court of the Additional District Judge, Dharamsala. At any rate the Appellants were informed on 24-6-1974 that the judgment was pronounced against them, nevertheless they applied for a fresh copy on 14-8-1974 and even after obtaining such copy on 17-8-1974 further delayed the matter up to 9-10-1974 when they filed the appeal with great deficiencies which they made good on 11-11-1974. As such it was pleaded that Section 12(2) of the Limitation Act will not help them because the copy was applied for in a wrong Court and similarly Section 5 of that Act will not help the Appellants because no sufficient ground was made out to condone the delay.

2 This Court after considering the evidence came to the conclusion that either the copy was never applied for on 19-12-1973 or if it was applied for it was done in a wrong Court as the Court of the Additional District Judge, Dharamsala, never maintained the Copying Agency which was rather maintained by the District Judge, Dharamsala. This Court further held that at any rate on 28-6-1974 the District Attorney came to know about the judgment and he should have taken prompt steps to apply for a copy which he could do only on 14-8-1974 and even after obtaining the copy on 17-8-1974 filed the appeal after much delay on 9-10-1974. All this period was not explained and hence no sufficient ground was made out for condoning the delay in filing the appeal. Accordingly the appeal was dismissed as time barred.

3. The Appellants have now come up with the present application and their main contention is that a "fraud was committed by their Counsel or his clerk and the State could not be held responsible for the said fraud". According to them the District Attorney "fabricated or forged entries" in the register and "created false evidence" and hence a question of law of general importance arises inasmuch as the State cannot be held liable for the fraud committed by its Counsel and that would be a sufficient ground u/s 5 of the Limitation Act. Firstly, there is no finding by this Court that any fraud was committed by the Counsel or his clerk or that any entries were fabricated or forged in the register. Rather the finding is couched in the following language:

The register entries Ex. P.A. and Ex. P.A./1 do indicate despite over writings, that the application was sent to the Copying Agency of the Court of the Additional District Judge".

With this statement it is doubtful if an application for a copy was at all sent as

indicated in the Dispatch Register. That apart if an application was at all sent it was addressed to a wrong Court".

It is, therefore, evident that this Court never held categorically that the entries were forged or fabricated. Rather a doubt was expressed if an application was at all moved on 19-12-1973 and it was held that if at any rate if it was moved it was addressed to a wrong court and hence no benefit could be awarded u/s 12(2) of the Limitation Act. That apart the Court further held that negligence or inaction was committed by the Counsel of the Appellants and that would not give a sufficient cause for condonation of delay u/s 5 of the Limitation Act. The finding is rather emphatic as below:

All this indicates intransigence on the part of the District Attorney and thereby on the part of the State.

It was held that firstly the application was addressed to a wrong Court and secondly despite knowledge of the judgment on 28-6-1974 the reminder was issued on 16-7-1974 and a fresh application for a copy was made on 14-8-1974. Thereafter the appeal was not immediately filed after 17-8-1974 when the certified copy was received but was filed after undue delay on 8-10-1974 and on that day also it was incomplete. All this did not afford sufficient cause within the meaning of Section 5 of the Limitation Act. It is, therefore, clear that the question posed by the Appellants in their present petition was not the subject matter of decision before the Court. The finding was of negligence or inaction on the part of the Counsel for the State. It was held that the State cannot take advantage of the negligence of its own Counsel and on the facts of the case no sufficient grounds existed for condonation of delay u/s 5 of the Limitation Act. In this view of the matter, in my opinion, a substantial question of law of general importance never arose in the present case. At any rate the High Court does not consider that any need arises for a fresh decision by the Supreme Court on the questions raised before it and thus decided by the High Court. Therefore, there is no merit in the petition under Article 133 and no certificate can be granted for appeal to the Supreme Court. The application is, therefore dismissed.