

(2002) 05 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 46 of 2002

State of Himachal Pradesh	Vs	APPELLANT
Surat Ram and Others		RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2002) 2 ShimLC 246

Hon'ble Judges : Aarun Kumar Goel, J

Bench : Single Bench

Advocate : Shubh Mahajan, AAG, for the Appellant; K.D. Sood and Anish Garg, for the Respondent

Judgement

Arun Kumar Goel, J.—Heard learned Counsel.

This revision is directed against the judgment dated 9th October, 2001, passed by the District Judge, Solan in Civil Appeal No. 37 of 2000; whereby while dismissing the application u/s 5 of the Limitation Act for condonation of delay filed by the Appellants, he has also dismissed the appeal being time barred.

2. Learned lower appellate Court on examination of application filed u/s 5 of the Limitation Act, was satisfied that no cause or reason much less sufficient ground for condonation of delay was made out.

3. This case shows the seriousness with which those who are interested with protecting the interest of the State in law Courts are looking into the matters. After expiry of limitation four months thereafter appeal was filed before the lower appellate Court. It has been urged on behalf of the Respondents that in case impugned order is set aside, it will tantamount to putting premium on the acts of negligence as well as remissness on the part of the Petitioner-State. Per Mr. Sood, no cause much less sufficient cause is made out for condonation of delay. He has, therefore, prayed for dismissal of this revision petition on this short ground alone.

4. On the other hand, learned Assistant Advocate General submitted that in the circumstances of this case delay needs to be condoned because in the Government offices approach being impersonal in the event of revision being dismissed, larger public interest will suffer. She further submitted that in the event of delay being condoned all that what her clients would have got was that appeal would have been taken up for consideration on merits and nothing more.

5. After considering respective submissions and also having gone through the records of this case, as well as for the reasons to be recorded hereinafter, this revision deserves to be allowed and impugned judgment set aside.

6. It is a matter of common knowledge that in the Government offices, the approach of persons dealing with the files is generally impersonal. Files move from table to table and office to office. Those who are at the helm of affairs little realise gravity and seriousness of the matters. Thus, experience shows it results in cases like present one losing limitation and as a consequence of it, Government's interest suffering. No doubt, Appellant-State and its functionaries are expected to act with utmost expedition and promptitude, but still for inaction or negligence of the officials larger public should not be allowed to suffer. Besides this, a party like State does not stand to gain by filing a time barred appeal. There is no presumption in law that whenever delay occurs, it is either willful or intentional. It is by now well settled that where technical plea of limitation is pitted against grant of substantial justice former will give way to latter. Courts are respected for doing justice between the parties and not throwing out good cases at threshold without those being determined on merits. This is how Supreme Court viewed the matter regarding condonation of delay in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*,

7. To similar effect are the decisions reported in *State of Haryana v. Chandra Mam and Ors.* JT 1996 (3) 371; *State of U.P. v. Sunder Singh and Ors.* JT 1999 (10) 507 and *Municipal Corporation, Gwalior v. Ramcharan (D)* by Lrs. and Ors. JT 2002 (4) 346.

8. Faced with this situation, learned Counsel for the Respondents submitted that Petitioners need to be burdened with exemplary costs. For this purpose he placed reliance on a decision of this Court, dated 27/28th November, 2001, *Union of India v. Krishna Coal Company*, CMPMO 21 of 2000, and other connected cases, as well as in *M.K. Prasad Vs. P. Arumogam*, In the Supreme Court Case while setting aside the ex-parte decree, Supreme Court fixed exemplary cost of Rs. 50,000 which was made payable to the opposite side within 30 days. Whereas in the case of *Union of India v. Krishna Coal Company*, supra, while condoning the delay by setting aside the judgment of the District Judge, this Court imposed cost of Rs. 5,000.

No other point is urged.

9. In view of the aforesaid discussion and taking cue from the afore said decisions while allowing this revision petition and setting aside the judgment of

District Judge, Solan in Civil Appeal No. 37 of 2000, dated 9th October, 2001 in State of Himachal Pradesh and Ors. v. Surat Ram and Ors., it is ordered that it will be subject to payment of Rs. 2,500 as costs. Costs will be paid to the Respondents on the next date of hearing before the appellate Court below, where parties have been directed to appear on 6th July, 2002. It is made clear that in case costs shall stand dismissed. Appeal shall now be taken up for consideration on merits by the appellate Court below.

Parties are left to bear their own costs.

Before parting with this case, it is ordered that Chief Secretary to the State Government will either himself or through an officer of appropriate rank will get this matter enquired into and fix the responsibility why this appeal got time barred. Thereafter costs of Rs. 2,500 shall be recovered from such officer/official, of course after hearing such officer/official. This exercise, shall be completed on or before 30th November, 2002 and affidavit placed on record by the Chief Secretary by that date. For this limited purpose matter will be listed before the Court in the first week of December, 2002. Registry will send an authenticated copy of this order to the Chief Secretary as well as to the District Judge, Solan forthwith.