

(2020) 10 SHI CK 0258

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1375 Of 2020, ?Latter Patent Appeals No. 50 Of 2020

State Of H.P. & Others

APPELLANT

Vs

Rajiv & Another

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Citation : (2020) 10 SHI CK 0258

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Ashok Sharma, Rita Goswami, Romesh Verma

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. Heard.

2. The Letters Patent Appeal filed by the State of HP, against the judgment dated 5.9.2018, passed by Hon'ble Single Judge, in CWP No. 771 of 2016, is barred by 354 days.

3. In this application seeking extension of time in filing the LPA, the applicants offer the following explanation which led to the delay.

a) The impugned judgment was pronounced on 5th Sep 2018;

b) The State applied its certified copy on 5th April 2019;

c) The office of Learned Advocate General took delivery of the certified copy on 18th April 2019;

d) Office of Learned Advocate General sent the certified copy of the judgment to the office of Engineer-in-Chief vide letter dated 29.04.2019, which was received on 1.5.2019;

e) After that the matter allegedly was examined in the office of Engineer-in-Chief and was referred to the Law Department to the Government for further examination/opinion on 24.5.2019. Thereafter the matter was examined at the Government level in consultation with law department and advice of the Government to file LPA was conveyed to the Engineer-in-Chief on 16.7.2019. The said communication was received in the said office on 18.7.2019 and further sent to the office of Superintending Engineer 4 th Circle, Shimla, which was further sent to Executive Engineer, Dhamsi vide letter dated 19.7.2019. Thereafter the matter was sent to the office of Assistant Engineer, Jatogh Sub Division HPPWD, Shimla on 2.8.2019, which was received there on 7.8.2019. Thereafter on receipt of the opinion of the Government, the grounds of appeal were drafted and sent for approval on 13.8.2019, which was further sent to the office of Superintending Engineer 4th Circle, Shimla on 14.8.2019, which were further sent to legal Cell of PWD, Engineer-in-Chief, Shimla and received there on 23.8.2019.

f) After getting the same vetted on 27.8.2019, the matter was sent to learned Advocate General, H.P., Shimla for final vetting and the same was received in Division Office on 29.8.2019.

g) The appeal along with this application, was filed on 30.8.2019 i.e. after about 354 days.

4. The Applicants-appellants have also filed the supplementary affidavit, reiterating all the facts narrated in the application. It states that the explanation for the delay between the period 5.9.2018 to 5.4.2019 is due to the concerned restorer's oversight, who did not apply the copy of the judgment. However, there is no reason or explanation to corroborate such bald allegations.

5. Mr. Romesh Verma, learned counsel appearing for the respondents vehemently opposed the application for condonation of delay firstly on the ground that the delay is not explained satisfactorily and secondly on the ground that the recent judicial pronouncement in Vidya Devi versus State of H.P., (2020) 2 SCC, 569 as well as judgment of three Judge Bench in State of H.P. & Another versus Umed Ram Sharma (1986) 2 SCC, 68, covers the present case in all fours.

6. There is no satisfactory explanation qua the initial delay as occurred in the office of learned Advocate General. The applicants-appellants could have explained the same in the supplementary affidavit, however, failed to do so. Thus, the applicants-appellants have miserably failed to show sufficient cause, which is a paramount consideration, while considering an application of this nature.

7. On the expiry of the period of limitation prescribed under the Law for filing the appeal, a valuable right accrues in favor of the opposite party. Such a right cannot be taken away without showing sufficient cause. The explanation as forthcoming is neither plausible nor reasonable, warranting the condonation of delay as occurred in filing the appeal.

8. Given the above, we find no merit in this application, and the same is accordingly dismissed. Consequently, there is no Letters Patent Appeal before this Court. All pending applications, if any, are also closed.