

(1998) 05 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : IA-1 Of 1997 Condonation of delay in C.I.A. No. 21 Of 1997

State of Jammu and Kashmir

APPELLANT

Vs

Dorjai Tsering and others

RESPONDENT

Date of Decision : 29-05-1998

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Section 5

Citation : (2000) KashLJ 89

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Tashi Rabstan, P.N.Goja, M.A.Goni, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, Judge.

1. This is an application for condonation of delay in filing the appeal the appeal against the judgement and decree passed by District Judge, Leh.

Camp Kargil on 4.10.1995, whereby exparte decree had been passed against the applicants as well as the Chairman, J and K Board of School

Education, Srinagar. The appeal was barred by time, as such present application was filed. When the matter came up before a learned single Judge

of this court, on 5th May, 1997 without issuing notice to the opposite side delay was condoned and the appeal was ordered to be admitted.

Respondent No. 1 feeling dissatisfied with the order of admission preferred CIMA/ LPA No. 13A of 1997 which was disposed of with the

consent of parties and order of admission passed by the learned single Judge on 5th May, 1997 was set aside, it was further ordered that if

respondent No. 1 (appellant in CIMA/LPA No. 13A of 1997) would file objections to the application for condonation of delay, the application

shall be decided by the Single Judge on merits. It is in the above background that this application has come up for consideration,

2. Facts relevant for the present application are very few. Exparte decree had been passed in favour of respondent No. 1 (hereafter referred to as

plaintiff) and against the Chairman, J and K Board of School Education, Srinagar and Appellants (hereinafter referred to as defendants 1, 2 and 3

respectively). Relief granted was that the date of birth of plaintiff was declared to be 25.3.1946 and thus suit was decreed with costs. Admittedly

appeal had not been preferred within time in this court. As per endorsement made by the registry on application under Section 5 of the Limitation

Act, it is clear that it was presented by the learned counsel on 3rd May, 1997. Since in the ordinary course of things appeal against the impugned

judgement and decree was required to be preferred at Srinagar as the case related to Leh, an application seeking permission of the court to

present the same before Jammu Wing was filed and the permission was accorded on 1st May, 1997. According to the averments made in the

application notice of execution was received by the Superintending Engineer Leh, who informed applicant No. 2 namely Secretary to Government,

Public Works Department Jammu on 4th April, 1997, where after steps were initiated to get the appeal drafted. It was further averred by the

applicants that from 12th to 16th April, 1997 there were holidays and thereafter from 18th to 20th April, 1997 needful could not be got done. In

this background it was pleaded that the delay was neither willful nor deliberate and was only due to circumstances because applicants could not get

the knowledge of passing of the decree. Thus condonation of delay in filing the appeal is prayed for.

All these pleas urged in the application were seriously contested and resisted by the plaintiff, whereas no reply has been filed by defendant No.

1Board. Whole thrust of the reply is that the applicants were well aware of the decree in question as they had been notified in that behalf. Reliance

was placed on communications, Annexure RA dated 6th December, 1996 addressed to Superintending Engineer, Leh by the plaintiff; Annexure

RB dated 26th December, 1996, a communication from District Superintending Engineer, Leh to Executive Engineer, Special SuhDivision Nyoma;

Annexure RC dated 3rd January, 1997, a communication from District Superintending Engineer, Leh to the plaintiff and Annexure RD dated 15th

February, 1997, a communication from plaintiff addressed to defendant No. 3.

Shri Goni, learned Senior Additional Advocate General submitted that in the facts and circumstances of the case delay deserves to be condoned

otherwise it will not only result in failure of justice but would further deny a hearing to the applicants. In support of this submission Shri Goni further

urged that even if it be assumed for the sake of arguments that there is any laxity on the part of officials, still his clients should not be made to suffer.

Another serious question raised on behalf of the applicants was that notice for execution had not been served upon his clients. There was no

occasion much less point in notice being served upon Superintending Engineer, Leh who, as per record is evident was not a party to the decree in

question. Regarding Annexure RC, on which much reliance was placed on behalf of the plaintiff, it was submitted that in the affidavit filed it has

been specifically mentioned that no such communication was ever received from the office of District Superintending Engineer, PWD Circle, Leh.

Thus Shri Goni urged that the delay in filing the appeal needs to be condoned else it will result in failure of justice. On the other hand Shri P. N.

Goja, learned counsel appearing for the plaintiff while controverting the submissions urged on behalf of the applicants, pointed out that no case for

condonation of delay is made out, and according to him if the plea urged on behalf of the applicants is accepted, it will result in allowing gross

negligence to be made a ground for condonation of delay. Reliance was placed on Annexures RA to RD with special emphasis on Annexure RC,

and it was pointed out that the present application deserves to be rejected with costs.

5. No doubt delay in filing a lis needs to be explained sufficiently so as to enable a court to come to the conclusion that the party concerned,

applicants in the present case were prevented from filing the appeal within time which needs to be condoned, still this court cannot lose sight of

the fact that State on one hand and individual on the other and in no hand and individual on the other hand in no case can be put at par. While

dealing with the matters in case of State it is well known that on account of impersonal approach on the part of officials as well as due to

procedural tangle of file moving from one table to another, if the requirement of minute explanation of delay is insisted upon as was being urged by

Shri Goja, then the State will not be in a position to meet this requirement which will result in failure of justice. Reason being that the approach in

such like matters needs to be justice oriented. This court cannot lose sight of the fact that the State in discharge of its functions keeps in view

public good as well as public interest. A situation may arise where delay may be caused by a dealing hand intentionally for variety of reasons. Thus

with a view to benefit the opponent, an official of the State can put a spanner in the wheel thereby ensuring that the right of the State is defeated.

This can neither be the purpose nor be the intendment of law.

6. Thus it is clear that in order to do justice between the parties the approach of the court has to be liberal in giving meaning to the provisions of

Section 5 of the Limitation Act. So far matter relating to liberal interpretation of Section 5 of Limitation Act is concerned, it had been receiving

attention of the Apex Court as well as other High Courts from time to time. For the view that has been taken in this judgement, reference needs to

be made to a few decided cases. In AIR 1987 SC 1353 "Collector, Land Acquisition, Anantnag and another, Appellants Vs. Mst. Katiji and

others, Respondents," the Hon'ble Court while enunciating the principles for considering an application under Section 5 of the Limitation Act has

Laid down the following principles:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

Refusing to condone 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.

Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay

? the doctrine must be applied in a rational common sense pragmatic manner.

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.

There is no presumption that delay is occasioned deliberately, or on account of capable negligence, or on account of mala fides. A litigant does not

stand to benefit by resorting to delay. In fact he runs a serious risk.

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.

In this judgement it was further observed:

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The

fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law

demand that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an evenhanded manner.

There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience

shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgement sought to be subjected to

appeal) and the inherited bureaucratic methodology imbued with the notemaking file pushing, and passing on the buck ethos, delay on its part is less

difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not

deserve a litigant not grata status. The Courts therefore have to inform with the spirit and philosophy of the provision in the course of the

interpretation of the expression "sufficient cause." So also the same approach has to be evidenced in its application to matters at hand with the end

in view to do evenhanded justice on merits in preference to the approach which scuttles a decision on merits.

7. In Judgements Today 1996(3) SC 371 "State of Haryana Vs. Chandra Mani and others", after considering the case law it was observed as

under :

11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court be it by private party or the State

are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the

appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in

an evenhanded manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account impersonal

machinery and the inherited impersonal machinery and the inherited bureaucratic methodology imbued with the notemaking, filepushing, and passing on the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay international or otherwise is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of delay.

In the present application whole thrust of the submissions made on behalf of the plaintiff was that vide Annexure RC a copy of the judgement

produced by the plaintiff was enclosed by the District Superintending Engineer, PWD Circle, Leh to applicant No. 2. In the counter affidavit filed

to the reply receipt of Annexure RC has been specifically denied by the Commissioner/Secretary to Govt., Public Works Department, Jammu.

This court has no reason to disbelieve the fact of nonreceipt of such judgement by the concerned applicant. It is not understood as to where was

the occasion for the court to have issue notice to Superintending Engineer, Leh when he was not a party. This fact had been specifically pleaded by

the applicants in paragraph 2 of the application; in reply the plaintiff has denied para 2 and has further stated that there is no case worth the name in

favour of the applicants. The appeal itself is hopelessly time barred. Thus it is obvious that the plea of the notice having been served upon

Superintendent Engineer, Lah has to been denied by the plaintiff. As already observed service of notice upon Superintending Engineer is of no

consequence.

Keeping in view the facts and circumstances of this case and examining those on the touch stone of the decision of Hon'ble Apex Court, referred

to hereinabove, this court is satisfied that the applicants were prevented from filing the appeal within the period of limitation and they have been

able to make out a sufficient cause for condonation of delay. Consequently the delay in filing the appeal is hereby condoned.

Before parting, it needs to be mentioned that the facts stated in the application for condonation of delay were highly cryptic without proper

particulars. It was in this background that the application was seriously contested by the plaintiff. It is high time that those responsible for

conducting government cases look into the matter properly and bring enough and adequate material in the shape of facts on record.

No costs.