

(2011) 05 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : CDLOW No. 4 of 2009, LPAOW No. 15 of 2009 and CMP No. 23 of 2009

State of Jammu & Kashmir and Another

APPELLANT

Vs

Chuni Lal and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Citation : (2011) 2 JKJ 383

Hon'ble Judges : Mansoor Ahmad Mir, J;Hasnain Massodi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Appellants-writ Respondents have moved this limitation petition for condoning the delay of 174 days which has crept-in in filing the Letters

Patent Appeal against the judgment and order dated 14.07.2008 passed by the Writ Court in OWP No. 308/2002 titled Chuni Lal and Ors. v.

State and Anr. on the grounds taken in it.

2. Letters Patent Appeal is directed against the impugned judgement whereby and whereunder compensation to the tune of Rs. 2.00 lac came to

be awarded along with interest @ 7.5. % from the date of filing of the petition till its realization on the grounds that the Respondents-writ

Petitioners are the husband and minor daughters of Mrs. Kailasho Devi who was electrocuted due to live electric wire which had fallen resulting in

immediate death of the said lady because of burn injuries.

3. The Respondents-writ Petitioners filed writ petition before the writ Court and claimed compensation. Chief Judicial Magistrate, Udhampur was

directed to conduct an enquiry in the matter, who after conducting the same held that death of said Kailasho Devi was the outcome of rash and

negligence of the Appellants-writ Respondents and also made recommendation for awarding compensation. Accordingly, writ court considered the matter and passed the impugned judgment.

4. Appellants-writ Respondents virtually accepted the judgment and took steps for satisfying the judgment but because of sweet will of higher up, came to be directed to file an appeal after a lapse of 174 days. It is apt to reproduce para No. 3 of the limitation petition:

That the department after coming to know about the judgment immediate steps was taken for taking up the matter with the administrative

department for implementing the judgment and a request was made to the administrative department for releasing the funds. This fact can be

gathered from the letter No. CEJ/Court/1460/508-11 dated 31.12.2008. Copy of the same is enclosed herewith and marked as Annexure-P for

the perusal of the Hon'ble Court. The administrative department after receiving the record from the concerned department and also for getting the

copy of the judgment considered the case and the matter was taken up with the law department for getting the opinion as to whether the judgment

required to be implemented or sanction required to be given for filing the LPA. The law department came to this conclusion that the case is fit for

appeal and accordingly a sanction was accorded for filing the LPA. What ever delay has-been caused, it is bonafidely and also some formalities

which were required to be fulfilled before filing the present appeal and on this score alone, the delay in filing the appeal requires to be condoned.

5. While going through the petition and the averments contained in para No. 3 supra, one comes to an inescapable conclusion that the Appellants-

writ Respondents have not tendered any explanation, not to speak of carving out sufficient cause for condoning such considerable delay.

6. The Law of Limitation is founded on public policy and is to ensure that the parties do not resort to delay tactics and seek remedy without delay.

Courts have powers to condone the delay if sufficient cause is shown.

7. The Apex Court in cases titled as Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, ; N. Balakrishnan Vs. M.

Krishnamurthy, and Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others, has laid down the tests for condoning

the delay and what are the factors which can be applied for testing the limitation

petition.

8. The Apex Court in a recent case in Balwant Singh (Dead) Vs. Jagdish Singh and Others, has held that what is sufficient cause. It is apt to reproduce para 25 and 26 herein.

25. We may state that even if the term sufficient cause"" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of reasonableness"" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.

Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

9. The Appellants-writ Respondents have not even given the details as to how delay has crept-in in filing the appeal in hand and what were the reasons which were beyond their control in causing the delay. It is also not mentioned in the petition that how many days delay had crept-in. Even otherwise, it appears that appeal is merit less.

10. The Apex Court in the recent judgment Union of India and Ors. v. Nripen Sarma reported in AIR 2011 SC 1237 held that limitation petition merits to be dismissed for want of sufficient cause. It is apt to reproduce para No. 3 of the said judgment as under: -

3. This appeal emanates from the judgment of the Division Bench of Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunchal Pradesh) in Misc. Case No, 1569 of 2007 in W.A. No. 72020 of 2006. The appeal filed by the Union of India

was dismissed by the High Court because of inordinate delay of 239 days. The Division Bench of the High Court, while dismissing the appeal, has

observed as under:

We have gone through the contents of the petition. The delay occurred because of the Respondents took their own sweet time to reach the

conclusion whether the judgment should be appealed or not. It is not that they were prevented by any reason which is beyond their control to take

such a decision in time. Even otherwise, on merits of the case also it does not appear to have any tenable ground of appeal. In the circumstances,

we do not see any merits in this petition.

11. In the given circumstances, we are of the considered view that this limitation petition merits to be dismissed. Ordered accordingly.

Consequently, the appeal too shall stand dismissed being barred by limitation.