

(2019) 05 J&K CK 0069

In the Jammu And Kashmir High Court

Case No : Cond Of Delay (CDLSW) No. 74 Of 2016, IA No. 01 Of 2017

State Of Jammu & Kashmir And Others

APPELLANT

Vs

Suresh Mitla And Another

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Citation : (2019) 05 J&K CK 0069

Hon'ble Judges : Dhiraj Singh Thakur, J; Sindhu Sharma, J

Bench : Division Bench

Advocate : Raman Sharma, Karman Singh Johal

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. This application has been preferred by the applicants seeking to condone the delay of 238 days in filing the present appeal against the judgment dated 18.12.2015 in SWP No. 1922/2003.

2. Applicants submit that delay in filing the appeal has occurred due to inter departmental correspondence and other administrative exigencies. The impugned judgment although was received by the department on 06.01.2016, but was forwarded for comments of the General Administration Department on 10.02.2016 and Director General of Police. Both the departments were sent reminders on 03.03.2016, 07.04.2016 and 25.05.2016, however, the applicants were advised by the General Administration Department to take up the matter with the Department of Law for accord of sanction. Thus, more time was taken for receipt of sanction to file the appeal till the same was filed. Applicants, thus, pray that the delay may be condoned in the interest of justice.

3. Mr. Karman Singh Johal, appearing for respondent No. 1 has vehemently opposed the application and sought its dismissal on the ground that there is no sufficient cause shown by the applicants for seeking indulgence of this Court for

condoning the delay. It is also submitted that the petition was contested by the parties since 2003 and the impugned judgment was passed in their presence, but they were not diligent enough, to file appeal in time.

4. We have heard learned counsel for the parties.

5. Admittedly the impugned judgment was passed in presence of counsel for both the parties, as such, applicants were aware of the judgment. The same was also forwarded to the concerned Department on 06.01.2016 but still the appeal was filed after a considerable delay for which no adequate explanation is tendered.

6. This Court in State of J&K vs Rattan Lal Ganjoo decided on 28.04.1986 and others, this Court has held in paragraph No. 4 that:

"4. In the present case, the impugned judgment was delivered on 1-11-1985 in presence of counsel for the parties. The record shows that the state Govt. agency applied for copy of the said judgment on 12-1-1986 and the copy was delivered on 22-1-1986 even though it had been prepared on 16-1-1986. It shows that the appellant applied for copy of the judgment after the expiry of period of limitation which had expired on 31-12-1986. This circumstance also goes against the State-appellant indicating no interest in pursuing the matter for filing of the appeal. The correspondence or consultation between different departments, as alleged in the application, cannot be construed a sufficient cause so as to condone the delay when the law has provided sufficient period to complete all such formalities."

7. Similarly the Apex Court in P. K. Ramachandran v. State of Kerala reported as AIR 1998 SC 2276 in paragraph No. 6 has held that:

"Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."

8. In view of the above, since neither the delay has been satisfactorily explained nor sufficient cause is shown, thus, we are not inclined to condone the delay in preferring the appeal, as such, application for condoning the delay is dismissed.