
(2010) 03 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : COD No. 90 of 2009

State of Jammu & Kashmir	Vs	APPELLANT
Gh. Mohd. Allie and Others		RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Section 5

Citation : AIR 2011 J&K 10 : (2010) 2 JKJ 633

Hon'ble Judges : Gh. Hasnain Massodi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gh. Hasnain Massodi, J.—There is a delay of 432 days in filing Ist. Appeal against judgment and decree passed by Ld. Ist Addl. District

Judge Srinagar on 5.10.2006 in suit titled Gh. Mohammad Allie v. State and Ors. The delay is sought to be explained on the ground that the Ld.

Trial court failed to follow procedure, laid down in order 5 CPC providing for issue and service of summons. It is pleaded that the Petitioners were

set ex-parte, even though the Petitioners had a Standing Counsel available in the Court. The Petitioner claimed to have acquired knowledge

regarding ex-parte judgment and decree passed on 5.10.2006, in the month of April 2007 and to have taken immediate steps to approach this

Court with the appeal and application for condonation of delay. The delay in filing the appeal is said to be attributable to the administrative and

procedural wrangles. The petition has been resisted inter-alia on the grounds that the suit which culminated in ex-parte judgment and decree was

initially filed in this Court on 5.5.1993 and that Shri Jalali the then Advocate General appeared on behalf of the Defendants i,e the present applicant

and Shri Anil Bhan, CGSC, appeared for the Defendant - Union of India; that the suit, later in wake of enhance-ment of pecuniary jurisdiction,

was transferred vide order dated 21.7.1995 to the court of Pr. District Judge Srinagar. The suit is there after said to have been transferred to Ld.

Addl. District Judge Srinagar for its disposal under law. It is pleaded that counsel for the Union of India all along appeared on behalf of the

Defendant No. 2 in the suit and that all the proceedings were taken in presence of the said counsel. The applicant is said to have been all along

aware of the suit and its pendency before the trial court and to have decided to file appeal against the judgment and decree only when the

Respondents filed an execution petition for execution of the judgment and decree. The Respondent pointing to the averments made in the COD

application insists that not only was the applicant/Appellant aware of the suit had admittedly a Standing Counsel in the court and became aware of

the judgment and decree about a year before the COD application was made but have failed to plead any sufficient cause that prevented the

applicant/Appellant from approaching the court within 90 days after the applicant/Appellant gained knowledge of the judgment and decree passed

against the applicant/Appellant.

2. Heard and considered.

It is well settled law that expression ""sufficient cause"" in Section 5 of J&K Limitation Act is to receive a liberal construction and a cause otherwise

genuine and meritorious, is not to be allowed to fail on mere technicalities. When we say that the expression ""sufficient cause"" must be liberally

construed what is meant is that the court while assessing and evaluating the cause shown, must not look for any strict proof of the events pleaded

or assess the cause shown on the touchstone of standard of proof adhered to in a criminal trial. It, however, does not imply that the delay more so

inordinate delay should be condoned as a matter of course reducing the law of Limitation meaningless and redundant. While rules of procedure and

rules of limitation are not meant to tripe people up, the rules are nonetheless to be followed and respected. Whenever delay is found to be

deliberate and intentional an effort to seek condonation of delay is bound to fail. The rules of limitation are not superfluous but are to be interpreted

in a meaningful manner so as to save the system from anarchy. It has been held

""that where the State has a litigant approaches the court with a prayer for condonation of delay, the courts must not lose sight of certain disadvantages that the State litigant confronts. However, the disadvantages or problems peculiar to the State as litigants are not to be used as camouflages to cover up gross negligence. It is to be borne in mind that ex-parte of period of limitation prescribed for legal remedy given rise to a right to the opposite party to treat the matter as closed and concluded between the parties. The legal right that has accrued to the opposite party because of injunction and negligence on the part of the litigant seeking condonation of delay, is not to be cursorily defeated. The agony of the opposite party becomes more grave and painful when the negligence on the part of the litigant asking for condonation, is persistent and un-repented.

3. In P.K. Ramachandran Vs. State of Kerala and Another, , the Apex Court has observed as under:

Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes 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.

4. In 2000 SLJ 331, it has been held that ""the State is as good a litigant as other private party and equal treatment to all litigants must be given. The principle of law also finds expression in 2001 SLJ 364 and 2001 SLJ 445 and also in 2003 (II) SLJ 467, where condonation of delay was sought on the ground that time was consumed by various agencies involved in the process of taking decision to the filing of the appeal. The Court observed that ""the law does not require a special treatment for the State when it is litigating a cause.

5. Having taken an over view of the law on the subject let us advert to the facts of the case.

6. The non applicant/Respondent instituted a suit as back as on 5.5.1993 pleading therein that Plaintiff's son Late Mushtaq Ahmad - a student of class 12th, was shot dead by BSF personnel on 9.7.1992 at Safakadal, Srinagar after an encounter between militants and the security forces. It was pleaded that after the encounter was over, the BSF personnel ransacked the houses including house of the non applicant/Respondent, dragged his son Mushtaq Ahmad and pumped six bullets into his body. It was averred that

case FIR 110/1992 u/s 302 RPC was registered against the BSF personnel. The non applicant/Respondent claimed a compensation of Rs. 11.00 lacs from the applicant/Appellant and the Union of India. The suit was initially filed in this Court and Advocate General appeared for the present applicant/Appellant. After the suit was pending in this Court for a little more than two years it was transferred to the court of Principal District Judge Srinagar for its disposal under law. While Shri Anil Bhan, CGSC appeared before Ld. Pr. District Judge Srinagar when the suit was taken up by the said court and transferred to the court of Addl. District Judge Srinagar and remained present in the trial court all along the applicant/Appellant who figured as Defendant No. 1 in the suit opted to stay away from the proceedings. Shri Murtaza counsel for the Union of India - Defendant No. 2, was present even on the date when the suit was finally disposed of.

In the circumstances the plea set out in the COD application that rules of procedure i.e Order 5 CPC were not adhered, is bereft of any merit and mere misrepresentation of facts. The applicant/Appellant having appeared through Shri U.K.Jalali, the then Advocate General, before the High Court for over two years, cannot be heard saying that it had no knowledge of institution or pendency of the suit. Again there was no reason for the applicant/Appellant not to appear before the trial court when the counsel for Union of India did not find any difficulty in assisting the court all through till the suit was finally adjudicated upon. The applicant/Appellant became aware of the decree as per its own showing in April 2007. The applicant/Appellant waited for full one year to approach the court with the appeal and application for condonation of delay. The delay of a little less than one year even after acquiring knowledge about decree and judgment in question cannot be justified in the name of administrative and procedural wrangles. The applicant/Appellant has been guilty of gross intentional, inexplicable and deliberate delay and averments made in the application and the surrounding circumstances do not enable the applicant/Appellant to make out a sufficient cause for condonation of delay. Justice has eluded the Respondent for last 17 long years and to reopen the matter shall be further agonizing for the Respondent and expose the Respondent to immense pain and hardship. Condonation of inordinate, deliberate

and intentional long delay has a fall out of making people to loose faith in the institution of judiciary as a sufficient and effective justice delivery system, which in turn leads to anarchy and uncertainty and in some cases prods people to look towards extra judicial sources and methods for relief and succor and to set right their grievances. Such a tendency is to be discouraged and can be effectively answered only if the court decisions are allowed to assume finality and justice seekers allowed to reap the fruits of litigation.

7. For the reasons discussed above the condonation of delay application being without any merit, is dismissed. The fate of the appeal can be no different. The appeal being time barred is also dismissed.