

(1999) 12 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous Petition No. 238/99, CIA No. 44/99

State of J&K and Others

APPELLANT

Vs

Abdul Khaliq Dar and Others

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Jammu and Kashmir Limitation Act, 1995 — Section 5

Citation : (2000) SriLJ 619 : (2000) 2 SriLJ 619

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

Advocate : Javaid Iqbal, J.A.Kawoosa, Advocates appearing for the Parties

Judgement

1. In this application, the applicants have made a prayer to condone the delay of eight months and seven days for filling the appeal against the order

dated 21071998 passed by the learned District Judge, Srinagar. The factual matrix of the case is that on 09021998 this court transferred

arbitration proceedings (No. 284/99 titled Abdul Gaffar Dar Vs. State of J&K and others) for disposal to the court of learned District Judge,

Srinagar with a direction to the counsel of the parties to appear in the transferee court on 18031998. On this date, the record of the arbitration

proceedings did not reach the office of the transferee court, but it was received on March 20, 1998. This transferee court, without any notice

either to the parties or to their counsel, fixed the next date for 27041998. On this date the counsel of the nonapplicant herein (Mr. M. A. Dar)

appeared and the court waited for the presence of the applicants by adjourning the case for 04061998. On the said day, the arguments in part of

the counsel of the nonapplicant were heard and the next date was fixed as 06071998. On this date, the remaining arguments of Mr. M.A. Dar,

Advocate were heard and the case was slated for orders on 21071998 when the impugned order was passed whereby the award of the

Arbitrator was made the Rule of the court. The nonapplicant filed the execution proceedings (No. 6/98) before the learned District Judge,

Srinagar. Notices were issued to the applicants judgment debtors, but nobody appeared on their behalf. Accounts bearing numbers 2210, 4210

and 2065 maintained by the applicant, Executive Engineer, Hospital Division, Soura in the Subtreasury, Khanyar and Saddar Treasury, Srinagar

respectively were attached. The applicants have pleaded that on June 19, 1999 they got the knowledge about the proceedings and challenged the

order dated 21071998 through the medium of the present appeal which is accompanied by this application.

2. The ground on the basis of which condonation of delay is prayed is that the learned District Judge on the receipt of the record from the court (on

20031998) ought to have issued the notice to the applicants or their counsel and then proceeded in the proceedings. In the absence of adoption of

such procedure, the limitation for filing the appeal starts from the date of knowledge.

3. The nonapplicant, in his objections has pleaded that it was the duty of the applicant to enquire about the proceedings before the transferee court

even after March 18, 1998. That the trial court had given sufficient time to the applicants for appearance as after the receipt of the record from

2031998, the case was adjourned to March 31, 1998, and April 27, 1998 when it was directed that in the absence of the applicants, the case

would be heard on the next date i.e. on 4.6.1998. part arguments were heard on 4.6.1998 and they were concluded on 6.7.1998. It is denied that

the applicants got the knowledge on June 19,1999 but pleaded that they were served notices of execution proceedings for 8.10.1998 and

12.11.1998.

4. Heard the arguments.

The counsel of the applicants has reiterated the grounds of the application in his arguments and laid stress that the transferee court on March 20,

1998 was required to issue notice to the applicants for the next date (31.3.1998). Mere postponement of the proceedings for 31.3.1998 was not

suffice. The second date fixed in the case was 27.4.1998 when it was ordered

that the arguments would be heard on the next date i.e. on June 4,1998. Partly, the arguments were heard on the said date which were concluded on 6.7.1998. The counsel has also contended that the applicants got the knowledge of the proceedings on June 19,1999 when notice was received by the applicant, Assistant Executive Engineer, and immediately, thereafter, on 28.6.1999 he filed this application alongwith the appeal. The Government functions like an impersonal machinery and certain amount of latitude by the Courts is not impermissible. In support of this contention he has cited the case of ""State of Haryana Versus Chander Mani"" (AIR 1996 SC 1623). He has also contended that in the case of "" State of U.P. and others Versus Haresh Chandra"" (AIR 1996 SC 2173) the Apex Court condoned the delay of 480 days in preferring the Special Leave petition.

5. Controverting these submissions, the counsel of the respondent has contended that the applicants have not shown reasonable or sufficient cause for condoning the delay as inaction on their part to pursue the proceedings was willful and not pardonable. The applicants were duty bound to know about the progress of the case on each and every date of hearing. That when the record was not received by the transferee court on the fixed date of 18.3.1998 they were required to make enquiries within reasonable time and not to remain complacent till the time when the above stated accounts in the Treasuries were attached. It is also contended that the applicants have made a factual wrong averment in the application when it is stated that they got the knowledge of the proceedings on 19.6.1999 because record of the execution proceedings reveals that notice date 11.11.1998 was received by them against a receipt for appearance in the executing court (District Judge, Srinagar) on 8.12.1998. In support of this argument, the learned counsel placed on record certified copy of the notice which recites that notice was received by one of the judgmentdebtor (applicant), but the concerned official had refused to put the stamp below the receipt. On such an admitted factual position, the plea advanced on behalf of the applicants that they got the knowledge of the proceedings only on 19.6.99 pales into in significance. Rather, inference is drawn that the absence was willful and the applicants were negligent in performing their official duty. Courts have no power to extend the period of limitation on equitable grounds, but law of limitation has to be

applied with all its rigour prescribed by the Statute. Nonapplicant herein, who got the fruits of litigation after hot contest and long wait is entitled to reap the fruits. He is clothed with a legal right accrued under the Limitation Act that time barred appeal cannot be entertained without sufficient cause being shown. In support of this contention the counsel has cited the case of ""R.K. Ramachandran V. State of Kerala"" (AIR 1998 SC 2276). In this case the explanation for condoning the delay on facts was neither reasonable, nor satisfactory, so the Apex Court applied the law of limitation with all its rigour. The counsel has also cited the case of ""State of Bihar and others Vs. Sunil Kumar Singh"" (AIR 1998 Pat 137). In that case delay of 146 days in filing the appeal was not condoned by the Division Bench as there was no sufficient and good cause for extending the period of limitation. The State had not shown the diligence in pursuing the case. In para No. 20 of the said judgment, the Judges came heavily on the concerned public servants by using the following expression:

20. We have already observed that under the garb of collective responsibility public servants take undue advantage by moving leisurely and in a careless manner in such matters. It is now high time that the public servants are to be held personally responsible in such matters where State exchequer suffers loss on account of inaction on their part in discharging of their functions as public servants.

6. Adverting to the facts of the present case, it is found that the applicants did not appear in the proceedings before the transferee court till the time impugned order was passed on 21071998. They also did not appear in the execution proceedings even after service of notice dated 11111998 (for 08121998). Their silence from 18031998 to 19061999 speaks of careless behaviour which amounts to malicious abuse of power. With the change in the socioeconomic outlook in our democratic setup, public servants are expected to be more attentive to their onerous duties which they must discharge diligently and, if public servant is found abusing his office, either by an act of omission or commission, and, as a consequence of which, there is loss to the public exchequer, action may be taken against such guilty public servant. In making this application with a prayer of condoning the delay, wrong statement of fact was made that the applicants got the knowledge of the proceedings only on June 19, 1999 when the

record of the executing court establishes the fact that notice dated 11111998 was served for appearance on 08121998. On such an admitted

position, no sufficient cause or good cause has been shown by the applicants which prevented them to file the appeal within the period of limitation.

Their inaction cannot be equated with impersonal element which has been discussed by the Apex Court in AIR 1996 SC 1623 (supra). In the

latter case, the expression ""sufficient cause"" was considered with pragmatism in justice oriented approach rather than the technical detection of

sufficient cause for explaining every days delay. The impersonal machinery and the inherent bureaucratic methodology imbued with notemaking, file

pushing and passing on the buck ethos were considered as factors causing delay on the part of the State. In AIR 1996 SC 1623 (supra) the

respondents themselves had approached the High Court in the year 1990 making a grievance that they had not been appointed even though they

were included in the select list of 1987 and that list itself expired under the relevant Rule. On the basis of the case, the Apex Court had found

sufficient cause for condoning the delay. The facts of the instant case are quite different so the principle enunciated does not apply here.

7. To sum up the discussion, the applicant is found without any merit which is, accordingly, rejected and, as a result, the appeal is dismissed being

time barred by limitation.