
(2006) 01 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4640 of 2005

State of Kerala and Others

APPELLANT

Vs

K. Pharmaceutical Works

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2006) 4 BC 365 : (2006) 3 CivCC 727 : (2006) 142 PLR 574 : (2006) 2 RCR(Civil) 139

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : M.L. Saggar, for the Appellant; Amit K. Jain, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—At the outset learned Counsel for the petitioner has stated that in pursuance to the order passed by this Court on 8.9.2005, the entire amount of Rs. 1,80,000/- has been deposited in the Court of Additional District Judge, Jind. He has further pointed out that 75% was deposited on 31-3-2004 as per the order passed by the learned Additional District Judge and Rs. 45,000/- i.e. 25% remaining amount has been deposited on 5-11-2005.

2. This petition filed under Article 227 of the Constitution prays for setting aside order dated 1.6.2005 (Annexure P-2) passed by the learned Lower Appellate Court refusing to condone the delay of 47 days in filing the appeal by dismissing the application u/s 5 of the Limitation Act, 1963. As a consequence thereof the appeal of the defendant-petitioners has also been dismissed.

3. Few facts may be noticed which are necessary for the disposal of the instant petition. The plaintiff-respondent filed a suit against the defendant-petitioner, on 11.11.1998, for recovery of Rs. 1,80,000/-. The suit was decreed on 9-5-2002. It is appropriate to mention that State of Kerala i.e. the defendant-petitioners, on

the basis of mutual arrangements, is represented by State of Haryana in the civil suit. Against the judgment and decree passed by the learned Civil Judge on 9.5.2002, an appeal u/s 96 of the Code of Civil Procedure, 1908 was filed. On account of 47 days' delay, an application u/s 5 of the Limitation Act, 1963 was also preferred. However, the learned Lower Appellate Court instead of condoning the delay, dismissed the application, having been influenced by the conduct of the defendant-appellants in the trial court. The view of the learned Lower Appellate Court is discernible from para Nos. 3 and 4 of the judgment, which read as under:

3. The suit was decreed on 9/5/2003 whereas the appeal was filed on 1/8/2002. The appellants have sought condonation of delay of 47 days in filing the appeal. It has been urged that the District Attorney, Jind had sent his comments to the Legal Remembrancer and Secretary to the Govt. of Haryana on 17/5/2002. The Law Department apprised the Govt. of Kerala about the Court judgment as per letter dated 31/5/2002. The letter was received by the Secretary to the Govt. of Kerala on 2.7.2002. The appeal was filed on 1/8/2002. It is evident from the copy of the letter written by Secretary to the Govt. of Kerala to the District Attorney, Jind dated 1/7/2002 that the judgment was received by the Govt. of Kerala on 11/6/2002. It is strange that the Govt. of Kerala took full one month time to write to the District Attorney, Jind. He was informed that the Director, Animal Husbandry, had been permitted to depute a competent officer to get in touch with him and file the appeal. However, no action was taken in the matter for the next 22 days and the appeal was ultimately filed on 1/8/2002. The appeal is hopelessly time barred.

4. The demeanour of the appellants/defendants in the lower Court deserves a mention here. The respondent/plaintiff had concluded his evidence on 26/3/2001 whereafter the court very generously granted eight in number opportunities to the appellants/defendants to lead evidence, but they failed to examine any witness and the Court was constrained to close their evidence under its own orders on April 23, 2002. It seems that the appellants/defendants were never serious about this particular case and no wonder they did not take the matter seriously even as the District Attorney and the Legal Remembrancer-cum-Law Secretary, Haryana had informed the Secretary to the Govt. of Kerala of all the relevant facts, including the judgment of the Court, within reasonable period of time. The State has to be treated as any other litigant by the court of law and it is under legal obligation to explain each day's delay in filing the appeal. However, the appellants have failed to satisfactorily explain the inordinate delay of 47 days in filing the appeal and the application for condonation of delay filed u/s 5 of the Limitation Act is hereby dismissed.

4. Having heard the learned Counsel for the parties, I am of the view that this petition deserves to be allowed. It is an admitted position that against the judgment and decree dated 9.5.2005, appeal could be filed on 1.8.2002, which was delayed by 47 days. The explanation given is that the District Attorney, Jind

has sent his comments to the legal Remembrancer and Secretary to Government of Haryana on 17.5.2002. The judgment of the court was conveyed to the defendant-petitioner on 31.5.2002, which was received by them on 2.7.2002. The appeal was filed on 1.8.2002. It has further been found by the learned Lower Appellate Court that the judgment was received by Government of Kerala on 11.6.2002, as is revealed from copy of letter written by Secretary to Government of Kerala to the District Attorney, Jind on 1.7.2002. Therefore, the learned Lower Appellate Court has found that one month time was taken by the defendant-petitioners to write to the District Attorney, Jind and still further no action was taken for the next 22 days. It is well settled that a liberal approach is required to be adopted in relation to condonation of delay sought u/s 5 of the Limitation Act, 1963. This Court, after referring to the judgments of Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, has concluded that in cases where larger public interest is sought to be served by condonation of delay, a more liberal approach has to be followed. These observations have been made in the case of State of Punjab Vs. Ex. Constable Swaran Singh, .Following the aforementioned view, the delay of 47 days in filing the appeal deserves to be condoned especially when it is remembered that right of one appeal is available in all jurisdictions and the first appellate court is the final court of facts. Therefore, the delay of 47 days in filing the appeal before the learned Lower Appellate Court deserves to be condoned.

5. I am further of the view that the approach of the learned Lower Appellate Court, based on the conduct of the defendant appellants, in availing number of opportunities before the Trial Court cannot be approved once the view of the trial court has culminated in passing of the judgment in favour of the plaintiff-respondent, then there is no room to point out on the conduct of the defendant-appellants by the lower Appellate Court for the purposes of deciding an application u/s 5 of the Limitation Act, 1963. It is also not acceptable that a litigant is required to explain every day's delay because it directly comes in conflict with the observations made by the Supreme Court in the case of Land Acquisition Collector, Anantnag (supra) and subsequent judgment in the case of Ram Nath Sao (supra). Therefore, the approach of the Lower Appellate Court cannot be appreciated.

6. In view of the above, this petition succeeds and same is allowed. The order dated 1-6-2005 passed by the Lower Appellate Court is set aside. The delay of 47 days in filing the appeal is condoned with a direction to the learned Lower Appellate Court to entertain the appeal and decide the same on merit. The parties through their counsel are directed to appear before the learned District Judge, Jind on 30.1.2006.

7. The learned Lower Appellate Court is further directed to expedite the hearing of the appeal preferably within a period of three months. Copy of the order be given dasti.