

(1996) 01 MP CK 0137

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1235 of 1993 (G)

State of Madhya Pradesh and others

APPELLANT

Vs

Smt. Bhuri

RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (1997) 1 MPJR 342

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : Arvind Dudawat, for the Appellant; Anil Mishra, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

State of M.P. figured as defendant in a Civil Suit No. 65-A/1987, filed in the Court of Civil Judge Class - I, Karera, Shivpuri. This was decreed. An appeal was preferred. This appeal was barred by limitation. There was delay of 19 days. This was dismissed on the ground of limitation. Against this order, present petition under Article 227 of the Constitution of India, has been preferred.

This delay is sought to be explained by pleading that the officer incharge Deputy Ranger, Karera District Shivpuri, was busy in "Tendu Patta" Collection. It is pleaded that this was a peak season for this purpose, and this caused the aforementioned delay. The precise averment contained in para 6 of the petition be noticed. This reads as under:

The appeal was barred by 19 days, therefore, petitioner filed an application u/s 5 of the Limitation Act, with the government that the judgment was passed on 24.12.1988, than applied for certified copy on 5.1.1989, certified copy was received on 20.6.1990. That a proposal was given by the Government pleader for tiling the appeal. As the Officer-in-charge, Dy. Ranger, Karera, District Shivpuri

was busy in Tendu Patta collection and other government works. The Tedu-patta was the seasonal work and if the collection work is not done in time, the utility of the collection becomes useless and the month of June & July is peak period for collection of Tendu-Patta, if this has not been done. The State Government amounts to suffer the heavy loss and also inconvenience to the public. Copy of the application filed U/s 5 of the Limitation Act, is at Annexure P/5. The application was supported by the affidavit of Dy. Ranger, S.K. Dubey explaining the delay in filing the appeal.

This explanation did not find favour with the appellate Court and the appeal was dismissed as barred by limitation. The State of M.P. pleads that in the matter of construing Section 5 of the Limitation Act, there should be liberal consideration in favour of the State.

There could be no dispute with the proposition that sufficient cause has to be established for exercise of discretion u/s 5 of the Limitation Act, 1963. Sufficient cause would mean a cause which is beyond the control of the party invoking the aid of this section. One of the test is to see whether it could have been avoided by the party by exercise of due care and diligence.

There are judicial pronouncements to the effect that a liberal construction so as to advance substantial justice when no negligence nor any inaction nor want of bona-fides is imputable, is to be adopted. Such was the view expressed by the Madras High Court in case of Krishna vs. Chathappan (1889) 13 Mad 269 (271) (FB). This view of the Madras High Court received the approval, of the Supreme Court in the case, reported in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., . The same High Court in Kichilippa vs. Ramanujam reported in (1902) 25 Mad 166, the Madras High Court has observed as under :-

"Sufficient cause" is evidently something more than "legally sufficient" or "sufficient" according to the rules laid down in the law of limitation; for if any case fell within these rules it would be governed thereby as in the case of suits, and there would be no scope for the application of S. 5, "sufficient cause" seems to mean not only those circumstances (such as the Court being closed, or time being spent in obtaining copies, or the party being a minor or insane) which the law expressly recognizes but which may appear to the Court to be reasonable looking to all the facts of the case.

As to what should be the limits of the discretion to be exercised would be found in the decision in Re-Manchester Economic Building Society (24 Ch D 48). Bowne L.J. expressing the opinion of the Court observed as under :-

It seems to me that to attempt in any one case to lay down a set of iron rails on which the discretion of the Court of Appeal was always to be obliged to run, and to say that the leave of the Court would never be granted except in certain special circumstances, and in a defined way would be very perilous. The rules leave the matter at large. Of course it is to be exercised in the way in which judicial power and the discretion ought to be exercised upon principles which are

well understood, but which had better not be defined in a case except so far as may be necessary for the decision of that, otherwise there is a great danger, as it seems to me of crystallizing into a rigid definition that judicial power and discretion which the Legislature and the rules of the Court have, for the best of all reasons, left undermined and unfettered.

Lord Dunedin while expressing the opinion of the Privy Council in the case of *Brij Inder Singh vs. Kanshi Ram* (AIR 1917 PC 156) made following pertinent observations :-

The learned Judge says that each case depends upon its own circumstances. This is true. But he seems to treat this truism as if it was destructive of the ideas that there can be a general rule. There is no inconsistency in the position. There may be a general rule as to the exercise of discretion but each case must, nevertheless, be examined as to its own circumstances, to see whether they make it fall within or without the terms of the general rule.

Here Government is a party, there is some room for adopting a different approach. No doubt Section 5 makes no distinction between the Government and a private individual, but nevertheless in considering an application u/s 5 of the Limitation Act, some distinction should be made. Thus in AIR 1929 Sindh 211 (*Secy. of State vs. Gurmukhdas and another*) some benefit was sought to be given to the State and following observations were made :-

In considering an application for extending period fixed by law for presentation of appeal a distinction must be made between Government and a private person. Though any delay in evidence of laches in the case of a private individual, the same cannot be said of Government and so delay can be condoned if it is inevitable.

Thus, it is possible to take lenient view of the laches on the part of the Government Department. Such was the view expressed by the Punjab High Court in *Union of India (UOI) Vs. New India Constructors, Delhi and Others*, . In the present case, the explanation given for delay can be accepted and, therefore, the delay is condoned.

This petition is accordingly accepted and the matter is remanded to the First Appellate Court to decide the appeal on merits.