

(2024) 04 BOM CK 0067

In the Bombay High Court

Case No : Second Appeal No. 305 Of 2009

State Of Maharashtra And Others

APPELLANT

Vs

Omprakash

RESPONDENT

Date of Decision : 25-04-2024

Acts Referred:

Maharashtra Prevention Of Delay In Discharge Of Official Duties Rules, 2013 — Rule 10, 11, 12, 13

Limitation Act, 1963 — Section 3, 5

Maharashtra Government Servants Regulation Of Transfers And Prevention Of Delay In Discharge Of Official Duties Act, 2005 — Section 10, 10(1), 10(2), 10(3)

Citation : (2024) 04 BOM CK 0067

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : D.V. Sapkal, M.M. Agnihotri, P.L. Sagdeo

Final Decision : Dismissed

Judgement

Anil L. Pansare, J

1. Heard Ms D.V. Sapkal, learned A.G.P. for the appellants and Shri M.M. Agnihotri, learned Counsel for the respondent.

2] The appeal has been admitted on the following substantial questions of law :

"1. Whether the learned trial Judge was justified in decreeing the suit filed by the respondent in absence of letter dated 16/3/2004 as well as without considering the effect, if any, to the Government Resolutions, which, according to the appellants, were not applicable to the respondent.

2. Whether the lower appellate Court has arrived at perverse finding of fact to the effect that no sufficient cause has been shown by the appellant in filing the first appeal beyond the period of limitation."

3] The appellant/State of Maharashtra is aggrieved by order dated 1/10/2008 passed by the Principal District Judge, Gadchiroli in Misc. Civil Application No.

20/2008 refusing to condone delay of 14 months 10 days in filing appeal against the judgment and decree dated 2/4/2007 passed by the Civil Judge Senior Division, Gadchiroli in Regular Civil Suit No. 9/2005.

4] Shri M.M. Agnihotri, learned Counsel for the respondent submits that the first substantial question of law can only be answered if the second substantial question of law is answered in the affirmative. He submits that the first substantial question of law refers to the merits of the case and the Court may go into the merits of the case only upon satisfying itself that the appellants have shown sufficient cause to condone the delay in filing appeal.

5] The First Appellate Court has held that the appellants failed to show sufficient cause. Unless this finding is over-turned, the learned Counsel submits, this Court need not consider the first substantial question of law. He has invited my attention to the judgment of the Hon'ble Supreme Court in the case of Pathapati Subba Reddy (Died) by LRs and Ors. Vs. The Special Deputy Collector (LA) [MANU/SC/0285/2024], wherein the Court, after referring to various rulings on law of limitation, has held in paragraph 26 as under :

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

(emphasis supplied)

Thus, what has been said by the Supreme Court is that merits of the case are not required to be considered in condoning the delay. Thus, merits cannot be looked into to condone the delay and in that sense, Shri Agnihotri, learned Counsel is correct in contending that unless delay is justified, this Court need not answer the first substantial question of law, which relates to the merits of the case.

6] Coming to second question of law, the First Appellate Court noted that the appellants led evidence on affidavit, but the witness has merely referred to various stages by which opinion of Government Officials, was sought. The First Appellate Court noted that the application does not disclose satisfactory explanation to condone the delay and accordingly rejected the application.

7] The learned A.G.P. submits that the First Appellate Court has adopted technical approach while rejecting the application. She has relied upon the judgment of the Supreme Court in the case of Sheo Raj Singh (Deceased) Through Legal Representatives And Others Vs. Union of India And Another [(2023) 10 SCC 531] to contend that the First Appellate Court ought to have adopted a liberal and justice-oriented approach and certain leeway ought to have been provided to the State. I'll come back to this judgment a little later. The reasons put forth for condoning the delay should be considered first.

8] The witness, in his affidavit before the First Appellate Court, states that the judgment and decree was delivered on 2/4/2007. The District Government Pleader, Gadchiroli issued a letter to that effect and was served upon the Naib Tahsildar, who was defendant no.3 before the trial Court. The concerned Naib Tahsildar was transferred and the said letter was misplaced and, therefore, no cognizance was taken to prefer an appeal. The Sub-Divisional Officer was also transferred. The subsequent officer joined on 12/5/2008 and came to know about the judgment from the office of applicant no.3, i.e., Naib Tahsildar. It appears that the Naib Tahsildar had written a letter dated 29/5/2008, whereupon the Sub-Divisional Officer, Desaijanj came to know of the judgment and decree passed by the Courts below, which was passed one year ago.

9] The affidavit, however, is completely silent as to what transpired in one year or what steps were taken by the concerned officials and why was suddenly a letter written on 29/5/2008. In other words, there is no explanation as to why step taken on 29/5/2008 was not taken prior thereto. What has been said is that the letter was misplaced at the office of Naib Tahsildar. When was letter misplaced and when was letter found, is not disclosed. The affidavit is further silent as to why applicant nos. 1 and 2, i.e., the Collector, Gadchiroli and the Sub-

Divisional Officer, Desaiganj were not made aware of the judgment and decree, either by the District Government Pleader or by the officer attending the Court matters.

10] The witness has then stated that applicant no.2 – Sub-Divisional Officer, Desaiganj wrote a letter to applicant no.1 – Collector, who in turn, instructed applicant no.2 to take legal advice for filing appeal. Thereafter, a letter was written to the Joint Secretary, Law and Judiciary Department, Nagpur, seeking opinion. The affidavit then refers to the letters written by the Under Secretary (Legal) to Government, Law and Judiciary Department and then a letter issued to the District Government Pleader to obtain certified copy to file appeal and so on.

11] As could be seen, vague statements are made as regards misplacement of letter, transfer of Tahsildar and Sub-Divisional Officer concerned, sudden development of writing letter after one year of passing the judgment and decree, correspondences with the authorities like Collector, Joint Secretary, Under Secretary, etc. The affidavit doesn't really disclose diligent approach, as expected from the officers, who are otherwise holding very responsible posts. The Court will expect a reasonable and acceptable explanation to condone the delay. To expect a liberal approach, the applicants must show that they made bona fide efforts. In the present case, except for the generalized statements, the applicants have not assigned any reasonable or acceptable explanation, nor can one gather, from the affidavit, the bona fide efforts taken by the applicants to approach the Court at the earliest point of time.

12] The Supreme Court in the case of State of Madhya Pradesh And Others Vs. Bherulal [(2020) 10 SCC 654] has held that law of limitation binds everybody including the Government and deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies.

13] The effect of delay has been explained by the Supreme Court in the case of Ramlal Vs. Rewa Coalfields Ltd. [AIR 1962 SC 361]. The Supreme Court, while interpreting Section 5 of the Limitation Act, held that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed. Thus, in the absence of sufficient cause, legal right, which has accrued in favour of the decree-holder by lapse of time, should not be lightheartedly disturbed.

14] On the point of condoning delay by imposing conditions, the Supreme Court in the case of Basawaraj and anr. Vs. The Spl. Land Acquisition Officer [AIR 2014 SC 746], held as under:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the

court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

Thus, the Supreme Court has held that in case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, imposing any condition whatsoever, amounts to passing an order in violation of the statutory provision and it tantamounts to showing utter disregard to the legislature. Thus, to condone delay by imposing costs or otherwise will amount to passing order in violation of the statutory provisions.

15] The Supreme Court in the case of Pathapati Subba Reddy (supra) has, on the law of limitation, observed in paragraph 16 as under :

"16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. v. Katiji and Ors. MANU/SC/0460/ 1987 : 1987:INSC:54 : (1987) 2 SCC 107 : AIR 1987 SC 1353, this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act."

Thus, the Supreme Court has, in clear terms, held that existence of sufficient cause for not filing the appeal in time is a condition precedent for exercising discretionary power to condone the delay. The Court further clarified that the

phrases 'liberal approach', justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

16] The learned A.G.P. has, however, relied upon the judgment in the case of Sheo Raj Singh (supra), wherein the Supreme Court considered various rulings on the point of condonation of delay and held in paragraph 41 as under :

"41. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests."

Thus, the Supreme Court, while upholding the judgment passed by the High Court, has held that exercise of discretion done by the High Court, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The use of words 'at times' is a clear indication that deviation to the rules of limitation is otherwise not permissible. The Supreme Court has referred to couple of cases in following terms :

"39. According to Mr Sharma, University of Delhi Vs. Union of India [(2020) 13 SCC 745] is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding University of Delhi, was seized of a situation where even if the delay were to be condoned, it would cause grave prejudice to the respondent Delhi Metro Rail Corporation at the instance of the casual approach of the appellant University. This Court, on the argument of non-availability of the Vice Chancellor for granting approval to file the appeal, and other reasons put forth in the matter, could not conclude that there was fulfilment of sufficient cause for condonation of delay; hence, the refusal to condone the delay. The decision really turns on the facts before this Court because of the prejudice factor involved.

40. We can also profitably refer to State of Manipur Vs. Koting Lamkang [(2019) 10 SCC 408], cited by Mr. Sen, where the same Bench of three Hon'ble Judges of this Court which decided University of Delhi was of the view that the impersonal nature of the State's functioning should be given due regard, while ensuring that individual defaults are not nit-picked at the cost of collective interest. The

relevant paragraphs read as follows :

"7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected."

17] The Supreme Court, while highlighting the aspect of protecting the interest of institution, has also observed that the law of limitation will have to be implemented, though would harshly affect the party. Thus, at the end of the day, the delay will have to be condoned only upon showing sufficient cause. At the same time, the institutional interest of the State will have to be considered but then the default of individuals cannot be ignored as well.

18] The default will have to be dealt with in terms of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short "the Act of 2005"), which reads thus :

"10. (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible :

Provided that, normally no file shall remain pending with any Government servant in the Department or Office for more than seven working days :

Provided further that, immediate and urgent files shall be disposed of as per the urgency of the matter, as expeditiously as possible, and preferably the immediate file in one day or next day morning and the urgent file in four days :

Provided also that, in respect of the files not required to be referred to any other Department, the concerned Department shall take the decision and necessary action in the matter within forty-five days and in respect of files required to be referred to any other Department, decision and necessary action shall be taken within three months.

(2) Any wilful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate 1.[disciplinary action under the All India Services (Discipline and Appeal) Rules, 1969, the] Maharashtra Civil

Services (Discipline and Appeal) Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

(3) The concerned competent authority on noticing or being brought to its notice any such dereliction of duties on the part of any Government servant, after satisfying itself about such dereliction on the part of such Government servant shall, take appropriate disciplinary action against such defaulting Government servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Government servant.”

19] As could be seen, sub-section (1) of Section 10 of the Act of 2005 provides that every Government servant shall discharge his official duties assigned or pertaining to him most diligently and expeditiously and that no file shall remain pending with any Government servant in the department, usually for more than seven working days. Thus, additional time taken will have to be properly justified. In addition, Rules 10 to 13 of the Maharashtra Prevention of Delay in Discharge of Official Duties Rules, 2013 (for short “the Rules of 2013) provides for detailed mechanism to prevent/avoid delay. Despite such a provision and several judgments of the Supreme Court deprecating casual approach in processing files, there is no improvement.

20] There is a reason for the same and the reason is not taking action, provided under sub-sections (2) and (3) of Section 10. It is unfortunate that the effect of sub-section (1) of Section 10 has been neutralized by not taking recourse to sub-sections (2) and (3) of Section 10. In that sense, all the officials have collectively failed to protect institutional interest of the State. Resultantly, the casual approach of Government servants continue and on top of it, the judgments of the Supreme Court are cited to argue as if the Government Servants have license to sit over the files and to expect the Courts to take liberal view.

21] As stated earlier, to expect from the Court a liberal approach, the officers, like the applicants, are/were duty bound to show that despite due diligence and bona fide efforts, the appeal could not be filed within stipulated time because of certain administrative exigencies, which were beyond their control. The Government Officials are under a special obligation to ensure that they perform their duties with due diligence and commitment.

22] The application as also the affidavit filed by the applicants before the First Appellate Court is completely silent as to what prevented the applicants to adhere to rigor of Section 10 of the Act of 2005. In fact, the reasons assigned to condone the delay does not show any cause, much less sufficient cause, to condone the delay. This is not a case where certain leeway could be provided to the applicants. The judgment of Sheo Raj Singh (supra) is, therefore, of no help to the applicants.

23] Put all together, the applicants failed to show that the trial Court has arrived at a perverse finding on fact to the effect that no sufficient cause has been

shown by the appellants. The finding appears to be in tune with Section 5 of the Limitation Act, 1963 read with the judgment cited above as also the provisions of the Act of 2005. The second substantial question of law is answered in the negative. Resultantly, the appellants failed to make out a case. The Second Appeal is accordingly dismissed.

24] Copy of judgment be served upon the Chief Secretary, Government of Maharashtra with a hope of taking action in terms of sub-sections (2) and (3) of Section 10 of the Act of 2005, of course, after giving an opportunity of hearing to the officials concerned. The action be taken by 30/6/2024. Reporting compliance of order will be highly appreciated.