
(2004) 03 AHC CK 0170
In the Allahabad High Court
Case No : First Appeal No. 248 of 2004

State of U.P. and Ors.

APPELLANT

Vs

Jagdish Prasad Sharma & Ors.

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2004) 03 AHC CK 0170

Hon'ble Judges : M.Katju, J and K.N.Ojha, J

Final Decision : Dismissed

Judgement

1. This First Appeal has been filed beyond time by 283 days. The judgment of the Court below was delivered on 212 2003. In the affidavit filed in support of the delay condonation application it is stated that after the judgment was delivered on 2122003, an application for obtaining certified copy was filed by the DGC on 262200 and the same was prepared and delivered to the DGC on 2822003. The SLAO Bulandshahr by his letter dated 2722003 asked the DGC to furnish copy of he judgment along with his opinion vide Annexure 1 to the affidavit. The DGC through his letter dated 5 32003 sent the certified copy of the judgment alongwith his opinion which was received in the office of the SLAO on 632003. Thereafter, the SLAO wrote a letter to the acquiring body on 2032003 for its opinion regarding filing of the appeal in the High Court. Thereafter, reminders were sent on 2932003 and 942003 to the Executive Engineer for taking steps for filing the appeal, vide Annexures 3, 4 and 5. The acquiring body i.e. Executive Engineer (Construction Division), PWD Khurja by his letter dated 2142003 sent his consent for filing the appeal and taking further steps in the matter. True copy of the letter dated 2142003 is Annexure 6. The District Magistrate, Bulandshahr then sent a letter on 85 2003 to the State Government for giving its approval for filing the appeal vide Annexure 7. Thereafter, the ADM (Administration) by his letter dated 462003 demanded the Court fee and the decretal amount from the acquiring body so that the appeal may be filed. True copy of letter dated 462003 is Annexure 8. Thereafter, the State Government granted approval for filing of

the appeal, which was received in the office of the SLAO on 462003. After receiving the approval order again the acquiring body demanded for release of the decretal amount and the Court fee from the State Government and the same was resisted by the State Government on 19122003. Thereafter, the Chief Engineer in response to the above order released the aforesaid amount by his letter dated 512004 vide Annexure 11. Thereafter, the Assistant Engineer, PWD was directed by the Executive Engineer to contact the Chief Standing Counsel, High Court for preparing and filing the appeal. The Assistant Engineer came to Allahabad on 2912004 and contacted the Chief Standing Counsel in this connection and the appeal was filed on 132004.

2. Thus there is unexplained delay of six months between 462003 when the order of the State Government granting approval for filing the appeal was received in the office of the SLAO and the release of the decretal amount and the Court fee by the State Government on 19122003 as is evident from paras 10 and 11 of the affidavit in support of the delay condonation application. Earlier also it appears that there was delay on various occasions, which is unexplained. There is further delay between 2912004 when the Assistant Engineer contacted the Chief Standing Counsel, High Court for filing the appeal and 132004 when the appeal was filed. All these facts show the callous and irresponsible manner in which this appeal has been filed. We are not satisfied that sufficient cause has been shown for the delay.

For the reason given in First Appeal No. 162 of 1997, State of U.P. and another v. Kamal Mustafa Khan and others, decided on 922004 and in First Appeal No. 160 of 1997, State of U.P. and others v. Kamal Mustafa Khan, decided on 332004 by this Court relying on the Supreme Court decisions in State of West Bengal v. Howrah Municipality, AIR 1972 SC 749 (para 27) and CWT v. Amateur Riders Club, 1994 Supp. (2) SCC 603, this application under Section 5 of the Indian Limitation Act is rejected. Consequently the appeal is also dismissed.