
(1993) 07 AHC CK 0024
In the Allahabad High Court
Case No : Civil Revision No. 102 of 1992

State of U.P.and another

APPELLANT

Vs

Jagdish Prasad Dubey

RESPONDENT

Date of Decision : 14-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 5

Citation : (1993) 07 AHC CK 0024

Hon'ble Judges : Hari Nath Tilhari, J

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—This Civil Revision under Section 115 of the C. P. C. is directed against the judgment and order dated 18292 passed by the Special Judge (E. C. Act) Lucknow/Additional District & Sessions Judge, Lucknow, whereby the learned Additional District Judge rejected the applicant's objections under Section 47 of the Code of Civil Procedure in Execution Case No. 47/1985.

2. As per office report, this revision on 111192 had been barred by 177 days. On behalf of the applicants an application under Section 5 of the Limitation Act has been moved for condonation of delay and it has been averred in the affidavit sworn by the Section Officer of the Agriculture Department, U.P. Govt. Lucknow that the judgment and order impugned had been passed on 18292. The lawyers in Civil Courts were on strike and later on the jurisdiction of the Lucknow judgship had been transferred to the Judgship of Unnao. The strike continued, according to deponent, till July, 1992 and, as a result of the same, applicant could not learn about the judgment in the case. It is further averred that when on 11892. Amin of the Court came to Civil Courts with attachment order and attached the vehicle of the department then on 12892, the officials of the department made inspection of the file in the Civil Courts and the applicant could learn that the applicant's objections had already been rejected by order dated 18292. The deponent in the affidavit had further averred that immediately thereafter on 2081992 the deponent applied for the certified copy of the

judgment and order dated 1821992 and the certified copy became ready for being delivered on 3181992 and it was received on that date i.e. 3181992. It is further averred that on 1st September, 1992, the deponent referred the matter to the Shasan alongwith Certified copy for necessary sanction and permission to approach the Hon"ble High Court and the necessary sanction and approval was finally accorded according to averment made in the affidavit on 2210.92 and thereafter according to applicant, Diwali vacation intervened and courts were reopened on 27th. October, 1992 on which date there was a reference as result of which the Court did not work. It is further averred that on 28th October, 1992, the department approached the office of the Chief Standing Counsel for allotment of the case and the case was allotted on November 3rd, 1992 and the revision was filed on 4111992.

3. According to applicant, in view of these facts and circumstances, the revision could not be filed in time and delay in filing the same did occur which was not intentional but is genuine and bonafide and, therefore, it has been prayed that delay in filing the revision of 177 days be condoned. The notice of condonation of delay had been issued to the opposite party and on 4th May, 1993 the opposite party filed an objection to the application for condonation of delay supported by affidavit.

4. I have heard the learned Standing Counsel at great length on the question of condonation of delay as well as on the merits of the revision in order to examine whether the revisionist's case in the petition comes within the four corners of the limitations prescribed by section 115 of the Code of Civil procedure for exercise of revisional jurisdiction by the this Court thereunder.

5. First I will like to deal with the question of limitation for condonation of delay.

6. There is no dispute that revision in the present case has been filed on 11111992 when it had already become beyond time by 177 days as reported by the Registry of the Court.

7. Under section 5 of the limitation Act, this Court has been given the power to condone the delay, if sufficient cause is shown by the applicant and it is also well settled principles of law that power and discretion under Section 5 of the Limitation Act have to be exercised keeping pace with concepts of justice and that none should be denied justice simply on the grounds of technicalities like that of limitation or the like provided the applicant shows that he has been vigilant and not negligent in his conduct, because equity and justice help those who are vigilant and who are equitable in the performance of their action and are not negligent. One who is negligent in the performance of their job such a person is not entitled to crave indulgence of the Court and say in negligent conduct the Courts should exercise discretionary power of condonation of delay. It is trite principle of law that where a case is filed beyond limitation because of the mistake of the Counsel, the matter should be considered sympathetically but mistake must be bonafide and it has been laid down that it should not be result

of applicant's or its agent's or counsel's negligence or negligent functioning, See *State of West Bengal vs. Administrator Howrah Municipal Board* (1972 (1) SCC 366) (AIR 1972 SC 749, and *Shakuntla Devi vs. Kuntal Kumari* (AIR 1969 SC 575) i.e. (1969(1) SCR 1006).

8. Keeping in view these basic principles of law relating to exercise of discretion under Section 5 of Limitation Act as regards condonation of delay, it has to be considered whether the applicant is entitled to get favourable consideration in the matter of condonation of delay and as such it has to be looked into what has been the conduct of the applicant in the matter of filing the revision, whether the applicant and his officials acted diligently or in a manner which may amount to negligent conduct. The allegation made in the counter affidavit per se shows that arguments in the case of execution had been completed on 17/18 January, 1992 and 24/1/1992 was fixed for delivery of judgment though on that date, the judgment had not been delivered. In the affidavit it has nowhere been averred that on 24/1/1992, the Courts did not give any further date for the delivery of the judgment or that the applicant or his pairakar did not have the notice or knowledge of 18th February, 1992 which was fixed for delivery of judgment and, as such, in absence of allegation to that effect that the applicant had no notice of the date i.e. 18/2/92, the date of delivery of judgment, it is to be presumed that the judgment was delivered on 18/2/92 and after the full notice and knowledge of that date to the applicant revisionist and the applicant had full knowledge of the date of delivery of judgment. It further averred that in the Civil Courts at Lucknow Lawyers' strike was going on and Civil Courts were closed on 20/2/92 and that thereafter the jurisdiction of Civil Courts in Lucknow was transferred to Unnao. The strike of lawyers continued till July, 1992 that may be so, but the Counsel and particularly, the Govt. Counsels I am quite sure were not on strike. Notice once having been given of the date, the pairakar of the applicant ought to have been present to take note of what happened in the case. If the applicant or pairakar do not attend the court on the date fixed for delivery of judgment nor did they take care to inquire about the fate of the case in which the date for delivery of judgment had already been fixed by the Court, from the District Govt. Counsel or from his staff or the Staff of the Court it can be said nothing but negligence or an act or carelessness on the part of the applicant and his pairakar. The continuance of strike of the lawyers cannot be taken to create obstruction in the way of the State pairakar to go to Court and to get information about the fate of the case. During the strike itself even parties and their pairakars appear in the case to take note of the fate or date of their cases. There appear no justification why State or its representatives should not have taken care to know about the fate of the case. There is no averment that anybody approached District Government Counsel at any stage to make enquiry from him nor there is any allegation that D.G.C. did not give any information about the fate of the case. In absence of such facts it cannot be presumed as well as conceived that the applicant did not know about the judgment which had been delivered on 18th February, 1992. No reason or cause has been shown or indicated why the

applicant or its pairakar could not know about the judgment that had been delivered on 18/2/92. What prevented it from taking or gathering the information. Apart from this, when according to them, the Am in came to attach the vehicle of the Department that is how he alleges to have come to know and they got the file inspected and learnt about the disposal of the objection. I am unable to believe the appellant did not know nor did come to know, the officials of the department as well as persons responsible did know earlier that the order had been passed on 18th Feb., 1992 and on 12/8/92, the revision itself had become time barred as ordinary limitation for filing a revision is 90 days under Section 115 of the Code of Civil Procedure. The further allegation made in the affidavit reveals that inspite of this fact coming to their knowledge that their right to approach this Court under Section 115 CPC had already become time barred, the applicant and the authorities responsible to grant sanction and permission for filing a revision did not act with due caution and care as vide para 11, a Certified copy of the judgment became available on 31/8/92 and the matter having been referred alongwith certified copy as averred in para 12 of the affidavit had been referred to the Govt. or Shasan in September, 1992, but it took almost two months to the Government to grant the sanction. The State inspite of full knowledge in the matter of granting sanction moved with the speed of turtle and sanction was granted on 22/10/92. The matter was taken to be very easy, as it was assumed that the delay will be condoned even if the State authorities moved lingered. Thereafter when the sanction has been granted, nobody did contact the learned Standing Counsel till 29th October, 1992. The learned Standing Counsel could have been contacted even if there was vacation in the High Court i.e. Diwali vacation in the High Court, the revision could have been got prepared during that period. But the department and departmental people contacted the learned Standing Counsel on 28th October, 1992 and then the case was got allotted on 3rd November, 1992. There is no explanation for this leisurely exercise and revision was filed on 4th November, 1992.

9. Looking to the entire setup of facts and explanation, it does not appear to me that State and State authorities acted in a bonafide manner and so the cause shown is not sufficient.

10. In this view of the matter, in my opinion, there being no sufficient explanation cause for the period of delay, as mentioned above, and there is no explanation why the authorities acted in such a lethargic manner that it took two months time to grant the sanction. Thus having considered the matter, as regards the condonation of delay, I find the conduct of the State authorities perse does not show sufficient cause, instead exhibits the carelessness of approach to the matter relating to courts in lethargic manner I do not find it is to a fit case for condonation of delay.

11. I have heard the learned Standing Counsel on the merits of the matter. The learned Standing Counsel submitted that in rejecting the objection under 47, the learned Court below did not appreciate the difficulties of the department and it

failed to consider that it was not possible for the department to consider the relief which had been granted by the Tribunal, in view of various stay orders granted by the Hon'ble High Court against the department. The allegations of this ground which has been referred are very vague. No order of stay has been referred to specifically which could be said to have restrained the state from implementing the order of the Tribunal and in such circumstances, if any, such order was not specifically pointed out to the Tribunal. There was nothing wrong on the part of Tribunal to reject the objection, even if it be taken that the Execution Court took an erroneous view, in rejecting the objection whether of law or fact, it did not amount to jurisdictional error.

12, The power under revision under Section 115 of the Code of Civil Procedure is limited in its scope and it is conferred to jurisdictional error i.e.

(a) that the subordinate Court has failed to exercise jurisdiction vested in it.

(b) the subordinate court had acted in excess of jurisdiction or in other words, has exercised the jurisdiction not vested in it.

(c) the subordinate Court has acted illegally or with material irregularities in deciding the case. There may be the case that where the subordinate Court erroneously decides a question touching jurisdiction may be a fact or law i.e. a question of jurisdictional fact and usurps the jurisdiction not vested in it or illegally refused to exercise jurisdiction, such may also be covered by the scope of revisional jurisdiction of the High Court and District Court under Section 115 of the Code of Civil Procedure.

13. The jurisdiction of revisional court under Section 115 of the CPC is not as much wide as that of an Appellate Court and it is circumscribed by the limitations prescribed by the provision conferring revisional power as such under Section 115 CPC. So in a revision, this Court cannot consider nor can interfere if there is a very simple error either of fact or of law.

14. Learned Counsel on behalf of applicant may at the most, if at all the case be said to be a case of error though I am not inclined to hold that any finding of the trial Court suffer from any error or it is a case of error of fact or error of law, it cannot be said to be a case of an error which may come within the four corners of the expression "jurisdictional error" as defined under Section 115 of the Code of Civil Procedure and, as such, there appears to be no merit as well in this revision.

15. Thus considered, this revision apart from being barred by time has got no merits and, as such, is dismissed. The revision is being hereby dismissed alongwith application for condonation of delay, as such application for interimrelief is also hereby rejected.

Revision dismissed.