

(2010) 07 AHC CK 0305

In the Allahabad High Court

Case No : Second Appeal (Defective) No. 250-D of 2010

State of U.P.through Collector, Azamgarh

APPELLANT

Vs

Keshav Murari Rai

RESPONDENT

Date of Decision : 03-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 5

Citation : (2010) 07 AHC CK 0305

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record.

This second appeal has been filed challenging the validity and correctness of the judgment dated 22.08.2009 and decree dated 03.09.2009 passed by the Additional District Judge, Court No. 3, Azamgarh in Civil Appeal No. 300 of 1996 arises out of the Original Suit No. 3 of 1989.

The brief facts of this case are that the plaintiffrespondents filed Original Suit no. 3 of 1989 for mandatory injunction not to interfere in the possession of the plaintiffrespondents and not to construct any road passing through the plot of plaintiffrespondents. The claim of the plaintiffrespondents was that he had purchased the said plot vide sale dated 15.5.1983 and is the owner and in possession of the property in dispute, but the defendantappellants are forcibly trying to make a road on the part of the land of the plaintiffrespondents.

The suit was contested by the defendantappellants by filing written statement denying the plaint allegations. The stand of the State Government was that the soil work of the road was being made by the department of P.W.D. which was already existing and no new road was being constructed on the plot of the plaintiffrespondents. It was also stated that the road was being constructed

under the Draught Relief Scheme with the mutual consent of the villagers in the concerned Gaon Sabha which had made the land available to it.

The Munsif Shahar, Azamgarh by judgment and decree dated 01.09.1994 decreed the suit filed by the plaintiff respondents.

Aggrieved by the said judgment and decree dated 01.09.1994 passed by Munsif, Shahar, Azamgarh, the defendant appellant filed appeal no. 300 of 1996 and the Additional District Judge, Court No. 3 Azamgarh by judgment and decree dated 22.08.2009 dismissed the appeal confirming the order of the trial court dated 01.09.1994.

The appellant has challenged the orders dated 1.9.1994 in suit and 22.08.2009 by the appellate court in the present second appeal.

As per Stamp Reporter's report there is delay of 181 days in filing the present second appeal.

The explanation of delay in filing appeal is given in paragraphs 3 to 24 of the affidavit filed in support of the delay condonation application. In the aforesaid paragraphs, it has been stated that certified copy of the judgment and decree dated 22.8.2009 was applied by the District Government Counsel (Civil), Azamgarh on 9th September, 2009 and the same was ready on the notice board on 19th September, 2009 and the copy was delivered on 22.9.2009. Thereafter, the District Government Counsel (Civil), Azamgarh by letter dated 13.10.2009 gave his opinion for filing second appeal and on receipt of the opinion, the Executive Engineer, Construction Division, P.W.D. by letter dated 10.11.2009 informed the Principal Secretary, P.W.D., U.P. Government, Lucknow that all the records along with opinion of the District Government Counsel (Civil), Azamgarh are being sent requesting for permission to file second appeal before the High Court against the order dated 1.9.1994 in suit and order dated 22.8.2009 by the lower appellate court. When nothing was done, on 23.11.2009 the Executive Engineer, Construction Division, P.W.D. Azamgarh again send a letter to the Principal Secretary, P.W.D. in reference to earlier letter dated 10.11.2009 for seeking permission to file the present second appeal.

By letter dated 2nd December 2009 the State Government granted permission for filing second appeal which was received in the office of the Executive Engineer, Construction Division, P.W.D., Azamgarh on 14.12.2009 who by his letter dated 14.12.2009 authorized Sri Farhat Iqbal Siddiqui working as Assistant Engineer for filing instant second appeal. He along with court clerk contacted the office of the Chief Standing Counsel on 17.12.2009 and the file was allotted to the Standing Counsel on 17.12.2009. After going through the file, the Standing Counsel handed over a letter dated 18.12.2009 addressed to the Executive Engineer, Construction Division, P.W.D., Azamgarh for arranging copies of documents necessary for filing the appeal and as the appeal is time barred also requested to submit reasonable explanation in support of delay condonation application.

Pursuant to the above letter, the Executive Engineer, Construction Division, P.W.D., Azamgarh send a letter dated 6.1.2010 to the Deputy Registrar, Sadar, Azamgarh requesting him to make available a copy of the sale deed dated 15.5.1983. On 8.1.2010, the Deputy Registrar, Sadar, Azamgarh informed the Executive Engineer that said sale deed dated 15.5.1983 is not entered in his record and as such he requested the Executive Engineer to furnish the correct details of the sale deed. After exchange of correspondences it was came to the notice that after separation of district Azamgarh the said sale deed dated 15.5.1983 came under the jurisdiction of Tehsil Mohammadabad, Gohana, District Mau and as such a letter dated 25.2.2010 was sent to the Deputy Registrar, Mohammadabad, Mau for making available a copy of said sale deed. As the copy of sale deed provided by Deputy Registrar, Mohammadabad, Mau was not legible and readable, the Standing Counsel again directed to get legible and readable copy of the same. Thereafter, on 11.3.2010 the Deputy Registrar, Mohammadabad, Mau provided a legible copy of the sale deed dated 15.5.1983 and the Executive Engineer, Construction Division, P.W.D., Azamgarh made available on 12.3.2010 detail estimate of Rs.1979.80/ for filing of second appeal. The Executive Engineer, Provincial Division, P.W.D. Azamgarh thereafter informed the Executive Engineer, Construction Division, P.W.D. Azamgarh by means of letter dated 30.2. 2010 that the required documents asked by letter dated 12.3.2010 is not available in his department and since the financial year was about to close as such the official became busy the Standing Counsel was then contacted by the officials on 20.5.2010 and after going through the file the Standing Counsel on 22.5.2010 dictated the appeal which was sworn on 26.5.2010 and the same has now been filed in July 2010.

Learned Standing Counsel has cited the following judgments in support of this second appeal being maintainable having been filed beyond period of limitation and on the ground that due to plausible reason the appeal could not be filed in time.

- (1) (1996) 3 SCC 132 ; State of Haryana Vs. Chandra Mani and others;
- (2) AIR 1996 SC 2750; Special Tehsildar, Land Acquisition, Kerla, vs. K.V. Ayisumma; and
- (3) (1998) 7 SCC 123; N. Balakrishnan vs. M. Krishna Murthy.

On the basis of the aforesaid three judgments, the Standing Counsel has urged that the Court is empowered to

condone the delay in filing appeal.

In the case of State of Haryana vs. Chandra Mani and others (supra) it has been held that sufficient cause of delay should be considered with pragmatism in justiceoriented manner. Certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic setup involving redtapism. Officer concerned should be made personally responsible for the delay in filing

the appeal. State cannot be put on the same footing as an individual.

In paragraph 11 of the above judgment, the Court further held that;

" litigants including the State are accorded the same treatment and the law is administered in an evenhanded manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the notemaking, filepushing, and passingonthebuck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise is a routine. Considerable delay of procedural redtape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justiceoriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justiceoriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State visavis private litigant could be laid to prove strict standards of sufficient cause."

On the basis of the case cited above in the case of Special Tehsildar, vs. K.V. Ayisumma (supra) in paragraph 2, it

has been held that;

"The transaction of the business of the Government being done leisurely by officers who had no or evince no personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen."

In the case of N. Balakrishnan Vs. M. Krishnamurthy (supra) it has been held ;

"that in absence of mala fide or deliberate delay as a dilatory tactic, court should normally condone the delay in filing of the petitions or appeals."

The Court further held that "Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics" but seek their remedy promptly. The idea is that every legal remedy

must be kept alive for a legislatively fixed period of time".

Generally, the Courts adopt lenient view while deciding the application for condonation of delay. However, the position now has become critical and requires remedial approach to the Government Officers who keep the matters pending and take their own time to grant permission for challenging the orders in higher courts either because they are incapable of taking decision in such matters or do not want to take a decision. The State Government is the bigger litigant in country. It has the aid of Govt. Counsels in lower judiciary, Standing Counsels in High Courts and Govt. Advocates on panel in Apex Court. The State Government has its legal cells for various departments and highly professional legal officers on its rolls. Even though provisions of Section 5 of the Limitation Act make no distinction between State and citizens, it appears that they have taken the courts in their hand for condoning the delay whenever they file petition as in some cases the Apex Court and the High Courts have granted them liberty in the peculiar facts and circumstances of that case by condoning delay in filing the petitions. This attitude of the State Government is to be changed and the Courts cannot pamper the lethargic and mental relapsed condition of such State offices and their officers for not taking a decision timely in filing petition or appeals. The rights of successful party cannot be kept at bay for all times to come till the State Govt. or its officers wake from their slumber.

It is not expected to a Govt. machinery which consists of all possible expertise and has the benefit of opinion of its counsels as in the present case to continue in hyper motion. The posts of Secretary & Chief Secretary to the Govt. are posts of responsibility and they have to take a decision within reasonable time if in their opinion appeals, revisions and writ petitions etc. are to be filed from the orders of lower courts.

The Courts cannot humour the State Govt. by casually condoning delay in approaching the seat of justice. Everyone, whether State or a citizen is equal in the eyes of law.

In the instant case the opinion of the D.G.C. with the recommendations of the Executive Engineer concerned was available to the Principal Secretary. The Standing Counsel could also have filed the appeal by framing substantial questions of law in the memo of appeal, but it was not done. Court fee stamp was purchased as far back as on 23.2.2010 and second appeal though was ready on the own showing of the appellant, and affidavit was made on 26.5.2010, yet it was not filed in the court before closing of the court for summer vacation w.e.f. 29.5.2010 and was filed on 1.7.2010. We do not emphasis for explaining day to day delay but take cognizance of the factum of delay explained in the casual manner in mostly all such cases and as in this case also that officer was sent back for brining certain papers, officers were busy elsewhere, reminders were sent to the Principal Secretary but no action was taken by them and by such general statement delay of months and sometimes years are tried to be explained, without any sense of responsibility. It is not that State is a neutral

party in court cases. In some cases it has high stakes and delay in filing appeal helps them in destroying and frustrating the rights of the successful party. The cases cited by the appellant are not applicable in the present case.

In view of the facts and circumstances of this case, the Court is not inclined to interfere in concurrent finding of facts recorded by the courts below as no substantial question of law arises in this second appeal from the judgments of the courts below which have recorded concurrent findings of facts against the appellant.

The delay condonation application is, accordingly, rejected and the appeal also stands dismissed.