

(2019) 03 CAL CK 0083

In the Calcutta High Court

Case No : Tender Of Md Appl (MAT) No. 1088 Of 2016 With CAN 6924, 6926 Of 2016

State Of West Bengal & Ors Vs Keshov Prasad Shaw?

Date of Decision : 14-03-2019

Acts Referred:

Limitation Act, 1963 — Section 5
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24

Citation : (2019) 03 CAL CK 0083

Hon'ble Judges : Soumen Sen, J;Ravi Krishan Kapur, J

Bench : Division Bench

Advocate : Susovan Sengupta, Subir Pal, Debayan Bera, Sakti Prosad Chakrabarti

Final Decision : Disposed Off

Judgement

Re: CAN 6924 of 2016 (condonation of delay)

This is an application under Section 5 of the Limitation Act whereby the appellant being the State of West Bengal has sought for condonation of delay of approximately 440 days in filing the instant appeal. On perusal of the petition, we find that the main ground in the application under Section 5 of the Limitation Act is that due to unavoidable bureaucratic formalities and compulsion of necessary permissions from various departmental hierarchies in the administrative set up, the appellants could not file the instant appeal within the stipulated time period. In paragraphs 3 to 12 of the application, the particulars of the delay in filing the instant appeal have been narrated.

Learned counsel appearing on behalf of the respondent has filed affidavit-in-opposition to the application for condonation of delay and has seriously opposed the application. In the application, the respondent has primarily relied on an affidavit filed in the contempt petition wherein the concerned representative of the State department had stated in paragraph 8 that steps were being taken to implement the order. It is also submitted on behalf of the respondent that having

accepted the impugned order, it does not lie in the mouth of the State to challenge it in appeal.

The terms "sufficient cause" has to receive liberal construction so as to advance substantial Justice where no negligence or inaction or lack of bona fide is imputable to the appellant. The Court in such a situation is expected to adopt the justice oriented approach in condoning the delay. (See. 2017 (12) SCC 840).

Although it is true that condonation of delay cannot be a matter of course; However, in a situation where there has been no deliberate inaction or lack of bona fide the court can always take a broad and liberal view so as to advance substantial Justice instead of terminating proceeding on the ground of limitation or of like nature. Moreover, in the instant case the interpretation of Section 24 of the Fair Compensation Act has fallen for consideration.

In Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others, (1987) 2 SCC 107, while considering "sufficient cause" in the light of Section 5 of the Limitation Act, 1963, the Hon'ble Apex Court pointed out various principles for adopting liberal approach in condoning the delay in matters instituted in this Court.

The principles are:-

- "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine 6 must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

In G. Ramegowda, Major and Others vs. Special Land Acquisition Officer, Bangalore, (1988) 2 SCC 142, the principles enunciated in paras 15 & 17 are apposite. They are:-

"15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

17. Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making."

In *State of Haryana vs. Chandra Mani and Others*, (1996) 3 SCC 132, while condoning the delay of 109 days in filing the LPA before the High Court, the Apex Court has observed that certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic set up involving red-tapism.

In *State of U.P. and Others vs. Harish Chandra and Others*, (1996) 9 SCC 309, by giving similar reasons, as mentioned in *Chandra Mani's* case (*supra*) the Apex Court, condoned the delay of 480 days in filing the SLP.

We express no opinion in respect of the pending contempt proceeding before the learned single Judge. We are of the view that as a proposition of law implementation of an order in the face of contempt does not make an appeal against the impugned order infructuous. We, however, are satisfied in respect of the explanations offered by the State in explaining the delay in filing the instant appeal.

In such circumstances, the application under Section 5 of the Limitation Act is allowed and disposed of by condoning the delay in filing the instant appeal.

The appeal is taken up for hearing.

It is admitted by both parties that a crucial question is involved in the instant appeal pertains to interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the orders passed both by the Hon'ble Supreme Court of India and the Hon'ble Division Bench, that if any matter is pending before a larger Bench of the High Courts, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the said Act (reported in (2018) 3 SCC 405 paragraph 9).

In the circumstances, hearing of the instant appeal is adjourned for a period of six months.

Liberty to mention.