

(2016) 01 KAR CK 0024
In the Karnataka High Court
Case No : W.A. No. 200417/2014

The Divisional Controller, NEKRTC

APPELLANT

Vs

Basappa

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 01 KAR CK 0024

Hon'ble Judges : Ram Mohan Reddy and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : Ratna N. Shivayogimath, Advocate, for the Appellant; Sanjay M. Joshi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—1. This application is filed by appellant to condone the delay of 431 days in filing the appeal calling in question the order dated 02.04.2013 in W.P. No. 84924/2011 by the learned Single Judge.

2. In the affidavit accompanying the application, Assistant Law Officer - deponent states:-after disposal of writ petition, Panel Advocate submitted the certified copy of order along with the entire file which was placed before Divisional Controller, who in turn forwarded it to "CLO" for legal opinion, who perused the entire papers and advised Divisional Controller and after discussion and acknowledgment of advise "CLO", returned the file back to "CLO" to entrust the matter to panel Advocate. Accordingly, "CLO" has forwarded all the papers to panel Advocate to prefer writ appeal. Hence, the appeal.

3. The averments in the affidavit do not instill confidence in the mind of the Court. Appellant is an employer of several thousands of person and is a regular litigant before Court and cannot be heard to say that "CLO" caused the delay in filing the appeal. Material dates and particulars are wanting. Sufficient cause is not shown to the satisfaction of the Court.

4. Appeal presented after it was time barred, appears to be as a result of process of leisurely interdepartmental and intra-departmental consultations. Apex Court in *ORIENTAL AROMA CHEMICAL INDUSTRIES LIMITED vs. GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION AND ANOTHER* (, 2010 AIR SCW 1788) deprecated the conduct of appellant therein submitting an explanation for the delay in filing the appeal on the premise that nobody contacted them for instructions which was held to be incorrect and false.

5. The idea underlining the concept of limitation is that every remedy should remain alive only until the expiry of the period fixed by the legislature while Courts are permitted to condone delay if sufficient cause is shown by the appellant for not availing the remedy within the prescribed period of limitation. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable Courts to apply the law in a meaningful manner which serves the ends of justice. It is no doubt true that Apex Court did hold that no hard and fast rule has been or can be laid down for deciding application for condonation of delay and that a liberal approach should be adopted. That view of the Apex Court was considered in *MANIBEN DEVRAJ SHAH vs. MUNICIPAL CORPORATION OF BRIHAN MUMBAI* (, AIR 2012 SC 1629) and departing from the said view while making reference to several opinions of the Apex Court over liberal construction, observed thus:

"18. xxx If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

6. In the facts of the said case, it was further observed that application for condonation of delay and the affidavit accompanying it was silent on (a) name of the person who was having custody of the record; (b) the date, month and year when the papers required for filing first appeals were said to have been misplaced; (c) date on which papers were traced out or recovered and name of the person who found; (d) no explanation whatsoever has been given as to why applications for certified copies of judgments were not filed; and (e) even though Corporation has engaged battery of lawyers to conduct case on its behalf.

7. Regard being had to facts of this case and averments set out in the affidavit of the Assistant Law Officer. It is needless to state that important points relating to the names of persons who were in custody of the file, relevant material dates

when the papers were shuffled between Divisional Controller and "CLO" and the dates as to when as between CLO and Divisional Controller consultations took place are not forthcoming and on that score alone, in the wake of non disclosure of material dates, application deserves to be rejected and is accordingly rejected.

I.A. 3/2014 does not survive for consideration and is accordingly rejected.

Sequentially appeal stands dismissed.