

(2000) 01 KAR CK 0005

In the Karnataka High Court

Case No : Miscellaneous Second Appeal No. 123 of 1998

The Special Land Acquisition Officer

APPELLANT

Vs

Parayya Hampayya Badasurmamath

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Limitation Act, 1963 — Section 24, 3, 4, 5

Citation : (2000) 3 KCCR 2154

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M. Ramaiah, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Heard the learned Government Counsel.

2. This appeal is against the order dated 22.6.1995 passed by the Principle District Judge, Belgaum, in appeal No. 656 of 1990 whereby the learned District Judge dismissed the appeal and affirmed the order of the reference Court i.e., in Land Acquisition No. 251 of 1989. The appeal had been filed in this Court on 4.3.1998 and as such, it has been delayed by 879 days. The appeal had not been filed along with the certified copy of the judgment and order of the reference Court when according the Rules that when a second appeal, regular or miscellaneous, is filed, along with it the certified copy of the Trial Court's, judgment, decree or award should also be filed. Hence the same was returned for being refiled along with the copy of the order of the Trial Court.

3. The learned Government Counsel in support of application for condonation of delay very vehemently argued that how much longer the delay may be, the Court's approach should be justice oriented and delay, as such, should be condoned irrespective of the fact that the delay is of four years or one day and, the Government is entitled to lenient view in its favour.

4. The basic principle of law in the matter of condonation of delay and in the

matter of construing of sufficient cause, no doubt, must be justice oriented and not too technical. But it does not mean that any party is entitled, whether it be the State Government or be the private party, to condonation of delay irrespective of the fact that it has not given any explanation for the delay or irrespective of the fact that it has not explained the delay in any manner. Nobody should think that it is the privilege of the party to file an appeal in Court beyond limitation. A duty is imposed on the Court u/s 3 of the Limitation Act in mandatory terms which provides that-

Section 3. Bar of Limitation-(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

This section imposes a duty on the Court to dismiss a suit, appeal or application filed after the expiry of period of limitation. No doubt, this general mandate is subject to the provisions contained in Sections 4 to 24 and if a case is made out by a party or circumstances are covered by any of these sections, no doubt, exemption may be granted with reference to that period. Section 5 of the Limitation Act, no doubt, confers a power on the Court even to admit an appeal filed after the prescribed period, but this jurisdiction is conferred and is exercisable only on court's being satisfied about the sufficient cause for not filing the appeal or making the application within such period, atleast on the last date of limitation and thereafter. So, satisfaction of the Court as to existence of sufficient cause is the condition precedent to exercise of jurisdiction u/s 5 of the Limitation Act. It is to be taken note of that if sufficient cause is not established and not shown or the delay has not been explained in accordance with the well settled principles of law and the Court is of the opinion that delay has not been explained or sufficiently explained, it has no jurisdiction or power to condone the delay even on the ground of equity simpliciter. When I so observe, I find support for my view from the law laid down on this subject by Their Lordships of the Supreme Court in the case of P.K. Ramachandran v. State of Kerala and Anr. reported in AIR 1998 SCW 2177. In the last paragraph of that judgment the Court observes,

6. Law of limitation may harshly affect a particular party but has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds.

5. Justice means justice to both the parties and unless a party explains sufficient cause for delay for not filing the appeal within limitation or on the last date of limitation and thereafter the condition precedent is not fulfilled and then the Court has got no jurisdiction to condone the delay or I may say, jurisdiction cannot be exercised to extend the limitation period or to condone the delay. In the present case, in the application for condonation of delay of 879 days in filing and delay of 599 days in refiling the appeal, I may say so, cause for delay has not been explained.

6. It is one of the principles of law that delay has to be explained day by day. No doubt, learned Government Counsel submitted that if it has to be explained day by day, why not hour by hour and minutes by minutes. The limitation is to be counted from the date of judgment. The limitation is counted for period specified by days, months or years and on the basis of days and dates and not by hours or minutes. It is not the fraction, of the day or particular minutes or seconds of the day for counting limitation under Limitation Act. So this contention of the learned Government Counsel is frivolous, unsustainable and based on non-application of mind to the provisions of Act which provides limitation by days and not by hours and minutes.

7. In this view of the matter, the delay has to be explained reasonably. In the present case what has been stated is as in paragraph No. 4 of the affidavit to the application for condonation of delay in refiling. I may quote that paragraph in extenso.

4. In the above case, the Additional Government Pleader, Belgaum, vide his letter dated 23.8.1995 has forwarded the certified copy of the judgment and award in LACA 656 of 1990 on the file of the Prl. District Judge, Belgaum, dated 22.6.1995 and the same was received by the Government on 28.9.1995. The same was submitted to the Section Officer by the case worker on 6.10.1995. The Section Officer put up the file to the Under Secretary on the same day. The Under Secretary reviewed the same on 9.10.1995 and submitted to the additional Law Secretary. The Additional Law Secretary who has gone through the opinion with the Under Secretary has passed an order on 10.10.1995 to file an appeal in the above case before the Hon"ble High Court of Karnataka and returned the file to the Under Secretary. The Under Secretary has also returned the file to the Section with orders to put-up the Government Order, on 13.10.1995. Draft Government Order submitted on 17.10.1995, and the same was approved by the under Secretary on 19.10.1995. The G.O. was issued on 26.10.1995. I submit that immediately after the Government Order was issued to file an appeal before the Hon"ble High Court of Karnataka, the papers were sent to the Advocate General's Office and in turn the Advocate General's office preferred an appeal and filed on 4.3.1998. Subsequently, the office of the Hon"ble High Court of Karnataka has returned the papers with objections. I submit that the Advocate General's Office has taken back the entire file and attended the office objections and the same was refiled before this Hon"ble High Court. The delay in refiling the above appeal is due to bonafide and not intentional. The delay occurred due to purely on administrative reasons including correspondence in between the Government Advocate General's Office and District Government Pleader, Raichur.

The paragraph No. 4 of the affidavit to the application for condonation of delay in filing the appeal is in same terms as earlier paragraph referred to above in connection with the condonation of delay in refiling except for the change of expression for "refiling", the expression "filing" has been used.

8. A perusal of these paragraph only reveals that the sanction was granted on

13.10.1995. The draft Government Order was approved on 19.10.1995 and the Government Order was issued on 26.10.1995. What has been done till the date of filing of the appeal has nowhere been explained as the appeal had been filed on 4.3.1998. So, the period from 26.10.1995 onwards has not been explained. The delay in refiling has also not been explained why the appeal could not be refilled after papers were returned on 4.3.1998 for 594 days. There being no explanation, bare or bald argument of justice oriented approach is not sustainable as justice has got to be done to both the parties and especially to the party whose rights are going to be affected. In this view of the matter, in my opinion, as delay has not been explained either in filing or refiling of the appeal, both the applications for condonation of delay have to be rejected and as such, these are hereby rejected. Once these applications are rejected, the appeal being barred by limitation has to be dismissed. As such, the appeal is hereby dismissed as barred by limitation.