(1978) 05 OHC CK 0007

In the Orissa High Court

Case No : Original Jur. Case No. 830 of 1977

Udayanath Satapathy APPELLANT

Vs

Revenue Divisional Commr., Central Division and Others RESPONDENT

Date of Decision : 10-05-1978

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (1978) 46 CLT 135

Hon'ble Judges : S. Acharya, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : S. Misra, No. 2, B. Das and U.K. Mohapatra, for the Appellant; B.B. Mohanty, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Acharya, J.—O. L. R. Appeal No. 58 of 1976, filed by the petitioner before the Additional District Magistrate, Puri, was dismissed on 23-6-77. Against the said order the petitioner filed O.L.R. Revision No. 206 of 1977 before the Revenue Divisional Commissioner, Central Division, Cuttack (opposite party No. 1) on 20-8-77 on various grounds. Along with the said revision petition the petitioner filed a petition u/s 5 of the Limitation Act. Opposite party No. 1 by his order dated 19-9-77 has dismissed that revision on the ground that the said revision was not filed within the period of limitation. This writ petition has been filed against the said order of dismissal.

2. The learned Revenue Divisional Commissioner has found that the limitation now prescribed for filing such a revision petition is 30 days, and as the revision petition was not filed within that period it is barred by limitation. The question as to whether the revision petition was to be filed within a period of 60 days or 30 days was not without doubt for reasons stated in the judgment in O. J. C. No. 829 of 1977 (Ramanath Sahu v. R. D. C., Central Division, Cut-tack) of this Court dated 26-4-78. While dealing with the law on the subject it has been held in that judgment that -

"While by amendment of Sub-section (2) of Section 63 the limitation has been reduced, no modification has been made in the rule and he (i.e. the Standing Counsel for the State) has assured us that no time would be lost in rectifying the mistake."

While holding that the period of limitation applicable for the purpose of revision is 30 days as provided in Section 63(2) of the Act, the Bench holds that there was a clear scope for the petitioner in that case to have been misguided because Rule 44 had not been properly amended, and so if the delay was not condoned the petitioner would be visited with injustice. Considering the above facts the said Court condoned the delay.

3. Their Lordships of the Supreme Court in Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Others, have observed that (at p. 542) -

"It is undoubtedly true that in dealing with the question of condoning the delay u/s 5 of the Limitation Act the party seeking relief has to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time and this has always been understood to mean that the explanation has to cover the whole period of delay, vide Sitaram Ramcharan etc. Vs. M.N. Nagarshana and Others, . However, it is not possible to lay down precisely as to what facts or matters would constitute ''sufficient cause'' u/s 5 of the Limitation Act. But those words should be liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party, i.e., the delay in filing an appeal should not have been for reasons which indicate the party''s negligence in not taking necessary steps which he would have or should have taken. What would be such necessary steps will again depend upon the circumstances of a particular case (vide The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, "

4. In this case as there was possibility for the petitioner''s lawyer in the Court below to be labouring under a bona fide belief that the revision petition could be filed within 60 days as the relevant rule had not been rectified, it cannot be said that the petitioner acted negligently in not filing the revision in time. From the impugned judgment it is evident that the petitioner''s counsel urged that the period of limitation for the said petition was 60 days and not 30 days and he tried to substantiate his argument by referring to Rule 44 which created the anomaly. In the petition u/s 5 of the Limitation Act it was mentioned that the petitioner''s Advocate was labouring under a bona fide belief that the limitation for filing the revision was 60 days.

5. On the aforesaid facts and considerations we condone the delay in filing the revision petition in the Court below and set aside the impugned order dismissing the revision petition only on the ground of limitation. The revision petition is accordingly restored to the file of the Revenue Divl. Commr., Central Division, Cuttack (opposite party No. 1). The lower Court records be sent back to the Court of the Revenue Divisional Commissioner, who, on giving an opportunity of

hearing to both the parties, shall dispose of the same on merits in accordance with law. An appropriate writ be issued accordingly only against opposite party No. 1 as prayed for by the counsel appearing for the petitioner.

6. The writ application is allowed. Parties to bear their own costs of this application.

Mohanti, J.

7. I agree.

