(2013) 03 DEL CK 0113

In the Delhi High Court

Case No : LPA 531 and 532 of 2012

Union of India and Others APPELLANT

Vs

Kamal Kumar RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Limitation Act, 1963 — Section 5
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 7(1), 7(3)

Citation : (2013) 03 DEL CK 0113

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Baldev Malik, in LPA 531, 532, 534 and 540/2012, for the Appellant; L.P. Dhir and Mr. Vikas Nautiyal, in LPA 531, 532, 534 and 540/2012, for the Respondent

Judgement

V.K. Jain, J.

CM 12463/2012 (delay in filing the appeal for 136 days)

CM 12469/2012 (delay in filing the appeal for 136 days)

CM 12481/2012 (delay in filing the appeal for 136 days)

CM 12763/2012 (delay in filing the appeal for 136 days)

1. Certain writ petitions being W.P. (C) Nos. 2276/1996, 302/1996, 303/1996 and 260/1995 were filed challenging the order dated 28th November, 1994 passed under Sections 7(1) and 7(3) of Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), by the Competent Authority, the Appellate Tribunal''s order dated 8th March, 1996 and the rectification order dated 8th May, 1996. The writ petitions were allowed vide common order dated 25th November, 2011. LPA No. 531/2012, 532/2012, 534/2012 and 540/2012 have been filed questioning the order passed in the writ petitions. Since the appeals have been filed after expiry of the prescribed period

of limitation, the aforesaid applications have been filed seeking condonation of delay of 139 days in filing the appeals. Pursuant to our order dated February 22, 2013, the appellants have filed a better affidavit explaining the delay in filing the appeals and the delay is sought to be explained in paras 2 to 19 of the said affidavit.

2. A reply has been filed by the respondents, opposing the applications, inter alia, on the ground that no action was taken by the appellants for more than two months to file the appeals and no reasonable and sufficient cause has been shown for condonation of delay in filing the appeals. In support of their reply, the respondents have relied upon certain documents obtained by them under RTI Act.

3. A perusal of the affidavit filed in support of the applications would show that copy of the impugned order was received by the concerned department after about four weeks, on 23rd December, 2011. Since, any decision whether to accept the order passed by the learned Single Judge or to challenge it by way of appeal could have been taken only after a detailed analysis of the said order with the help of the relevant files maintained in the concerned departments/Sections, the appellants cannot be blamed for not initiating any action in the matter prior to 23rd December, 2011. Since 24th December, 2011 and 25th December, 2011 were holidays, the order in question was received by the concerned dealing officer on 26th December, 2011 and the file reached the Competent Authority through proper channel, on 4th January, 2012. Considering that the dealing officer could not have put up the file directly to the Competent Authority and was, required to route the same through his superior, it cannot be said that the appellants were inactive in taking any action in the matter between 26th November, 2011 to 4th December, 2012. Immediately on the file being seen by the Competent Authority, a legal opinion from the counsel who represented the appellants in the writ petitions was sought vide letter dated 5th January, 2012. The appellants were justified in seeking legal opinion before deciding whether to accept the impugned order or to challenge it by way of appeal. The counsel also took some time to give opinion sought by the Department, which was received on 19th January, 2012. In the meanwhile, there was change of Competent Authority and the previous Competent Authoirty Smt. Renu Jauhri was replaced by Smt. Pragya S. Saxena. The opinion received from the counsel was placed before the new Competent Authority on 18th January, 2012. The said opinion was received by the dealing officer on 27th January, 2012, on account of intervening holidays on 21st, 22nd and 26th January, 2012. Since the office of the concerned department remained closed on 21st January, 2012 and 29th January, 2012, the approval to file appeal was sent to the counsel on 30th January, 2012. Thus, within about one month and one week of receipt of the impugned order, the concerned department had, obtained legal opinion from the counsel and taken a decision to file the appeals. Upto this stage, we do not find any laxity or inaction on the part of the appellants in processing the matter.

4. The learned counsel for the respondents submitted that there is no

explanation for the delay for the whole of the month of February 2012. This, however, was countered by the learned counsel for the appellants referring to the letter dated 5th March, 2012 written by the Competent Authority to the Under Secretary, Competent Authority Cell, Ministry of Finance, which the respondents themselves have filed along with their reply. A perusal of this document would show that the counsel took about four weeks to draft the appeals and sent the same to the department on 29th February, 2012. That explains the delay for the whole of the month of February, 2012. This letter also shows that on 1st March, 2012, Shri Baldev Malik, counsel for the appellants, had telephonically informed the concerned department that first he was required to get the Brief Transmission Form (BTF) to be issued in his favour from Ministry of Law & Justice, before the filing of LPA in this Court. It was because of this requirement that a letter was sent by the Office of the Competent Authority to the Ministry of Law & Justice seeking issue of requisite BTF in favour of Shri Baldev Malik, Advocate, on priority basis. 3rd March, 2012 and 4th March, 2012 were holidays and on 5th March, 2012, the above referred letter to the Under Secretary, Competent Authority was sent seeking permission/advice at the earliest. A copy of the brief of the case along with the LPA drafted by the counsel was enclosed to the said letter. A perusal of the letter dated 28th March, 2012 written by Ministry of Finance (Competent Authority Cell) to the Competent Authority would show that on receipt of the letter dated 5th March, 2012 from him, the matter was referred to Ministry of Law for the advice to file LPA against the impugned order. It appears from the legal advice annexed to the letter dated 28th March, 2012 that there was some delay on the part of the Department of Revenue in seeking opinion of the Ministry of Law. The opinion by the Law Ministry was sent on 26th March, 2012 and thereafter there was no delay on the part of the Competent Authority Cell inasmuch as the opinion of the Law Ministry was forwarded to the Competent Authority on 28th March, 2012 itself, and was received by the said Competent Authority on 29th March, 2012. The affidavit filed by the appellants shows that on 30th March, 2012, a reply with brief facts and ground for filing LPA was sent to the Ministry by FAX. 31st March, 2012 and 01st April, 2012 were holidays and on 02nd April, 2012, a letter enclosing the brief note along with the grounds on which the impugned order was considered to be bad in law and day-to-day reasons for the delay in filing of the LPA, along with certified copy of the impugned order, was sent by the Office of Competent Authority to the Competent Authority Cell in the Ministry of Finance, with a request that Ministry of Law & Justice may be requested for early approval for filing of the LPA. It would thus be seen that once opinion from Law Ministry was received by the Office of Competent Authority, there was no delay on its part in processing the matters. The documents filed by the respondents would show that about one week was taken by the Competent Authority Cell in the Ministry of Finance in processing the file after receipt of letter dated 2nd April, 2012 from the Office of the Competent Authority and the Deputy Legal Advisor gave his opinion on 26th April, 2012. The file was sent to the Department of Revenue on 27th April, 2012 and from there it was forwarded to the Office of the Competent Authority. The affidavit filed by the appellants would show that the approval for filing the LPA was received from the Ministry on 1st May, 2012 and it was put up to the Competent Authority on the very next day. 5th May, 2012 and 6th May, 2012 were holidays and on 7th May, 2012, a letter was sent to the counsel conveying approval of the Competent Authority and the concerned Ministry for filing the appeals. The appeals came to be filed on 9th May, 2012.

5. Considering the detailed explanation given in the affidavit filed by the appellants coupled with the documents comprising inter-departmental correspondence and legal opinion filed by the respondents would show that in the case before us, the concerned department has been diligently pursuing the matters with the Competent Authority Cell of the Ministry of Finance. We cannot be oblivious to the fact that under the procedure of the Government, inter-Ministerial correspondence may not be permissible below a particular level and that precisely seems to be the reason why the Competent Authority instead of dealing directly with the Ministry of Law & Justice had been routing the matter through the Competent Authority Cell, the Ministry of Finance.

6. The learned counsel for the respondent, in support of his contention, that the delay in filing the appeal ought not to be condoned, has relied upon the decision of the Supreme Court in Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, , where the Apex Court after considering its earlier decisions including the decisions in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , State of Haryana Vs. Chandra Mani and others, , National Insurance Company Ltd. v. Giga Ram and Ors., (2002) 10 SCC 176 , State of Nagaland Vs. Lipok AO and Others, inter alia, held as under:-

12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a SLP in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

It would thus be seen that the State and its agencies have to offer reasonable and acceptable explanation for the delay and show a bonafide effort on their part and the usual explanation that the file was kept pending for several months/ years due to procedural red-tape cannot be accepted. The Apex Court, however, did acknowledge that if it is shown that there was no gross negligence or deliberate inaction or lack of bonafide, a liberal approach in the matter could be adopted. It is not as if delay cannot be condoned in any case. What is necessary is a bona fide effort on the part of the appellant and a plausible and genuine explanation for the delay in coming to the Court. Though red tapism and what is usually termed as bureaucratic delays inherent in an insensitive government machinery cannot be a good ground for the condonation of delay, if it is shown that the concerned department has been vigilant in perusing the matter, a somewhat liberal approach in the matter can be adopted considering the constraints and limitations which are inherent in the functioning of a government department, bound by its own rules of business and procedure. As observed by Supreme Court in Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, , 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. Of course, if the explanation given by the applicant is found to be concocted or he is found to be thoroughly negligent in prosecuting his cause, there would be no scope for condonation of delay in coming to the Court.

In S. Ganesharaju (D) Thr. L.Rs. and Another Vs. Narasamma (D) Thr. L.Rs. and Others, condoning the delay of 53 days in filing a review petition, Supreme Court, inter alia, held as under:-

14. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act. 1963, has to be given a liberal construction so as to advance substantial justice.

15. Unless Respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

16. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

17. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

18. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause.

The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that Appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily.

7. The learned counsel for the respondents has also relied upon Charan Lal Sahu and Others Vs. Giani Zail Singh and Another, and Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another, . However, we do not find any such proposition of law in either of these cases which would disentitle the appellants from condonation of delay in filing these appeals. The learned counsel for the respondents referred to the observation made by Supreme Court in Ajit Singh Thakur Singh and Another Vs. State of Gujarat, to the effect that when a party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, such cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time and no event or circumstance arising after the expiry of limitation can constitute sufficient cause. However, in the case before us, it cannot be said that the appellants did not take any action in the matters during the prescribed period of limitation. The matter was processed as soon as a copy of the impugned order was received by the Competent Authority. Therefore the observations made by Supreme Court in Ajit Singh Thakur Singh (supra), do not apply to the case before us. Since we are of the considered view that the delay on the part of the appellants in approaching this Court stands substantially explained, the applications are allowed and the delay in filing the appeals is condoned subject to the payment of Rs. 10,000/- each as costs in all the four appeals.

