

(2014) 12 DEL CK 0137

In the Delhi High Court

Case No : RSA 33/2012

Union of India

APPELLANT

Vs

Rumal Singh

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2014) 12 DEL CK 0137

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Anurag Ahluwalia, CGSC and Shipra Shukla, Advocate for the Appellant; Niraj Jha, Advocate for the Respondent

Judgement

Sunil Gaur, J.—Impugned order of 22nd October, 2011 refuses to condone the delay of 103 days" in filing of the accompanying appeal by observing that there is no reasonable or sufficient ground to condone the delay, while relying upon ratio of Apex Court's decision in Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, .

2. The factual background of this case already stands noted in the judgment of the trial court, who had decreed respondent's suit. The charge against respondent, who was working as Sub-Inspector with the Central Reserve Police Force in 20th Battalion at Srinagar, was that he had fired a fatal shot at Constable-Mohinder Singh. The stand of respondent before the criminal court as well as in the departmental proceedings was that he had mistaken Mohinder Singh as a Pak Guerilla. A criminal trial was held against respondent which had ended in his acquittal and trial court vide its detailed judgment of 26th May, 2010 had held that the order of 3rd December, 1975 denying opportunity of hearing to respondent is null and void. Appellants were directed to inflict lesser punishment upon respondent. Appellants-herein had filed first appeal against trial court's judgment and appellants' appeal has been dismissed as time barred.

3. At the hearing of this second appeal, learned standing counsel for appellants

has placed reliance upon Apex Court's decision in *State of Nagaland Vs. Lipok AO and Others*, to submit that the length of delay is not relevant and the court should decide the matter on merits unless the case is hopelessly without merit and the liberal approach should be adopted in condoning the delay in the cases filed by the Government as the public interest suffers.

4. Learned standing counsel for appellants submits that the delay was due to the file moving through different channels and the decision taking process took time and that appellants have a case on merits and so, impugned order deserves to be set aside and the first appellate court ought to be directed to hear appellants' appeal on merits.

5. Learned counsel for respondent supports the impugned order and submits that the first appellate court has rightly relied upon later decision of the Apex Court in *Lanka Venkateswarlu (supra)* wherein it has been clarified that the concept of liberal approach or substantial justice cannot be employed to defeat the law of limitation.

6. It was submitted that there is no worthwhile explanation for the inordinate delay in filing the appeal and appellants have no case on merits whereas trial court has rightly decreed the suit of respondent.

7. Upon hearing and on perusal of the impugned order, trial court's judgment and the decisions cited, I find that the administrative delay in filing of the petitions/appeal by the Government has to be considered in the light of the parameters laid down by the Apex Court in its latest pronouncement in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others*, . The parameters within which application for condonation of delay is to be considered, as reiterated by the Apex Court in *Esha Bhattacharjee (supra)* , are as under:-

"From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice- oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system."

8. Applying the dictum of the Apex Court in Esha Bhattacharjee (supra) to the facts of the present case, I find that all that has been said on behalf of appellant is that the delay took place due to the file moving through different channels within the Government Department and the decision taking process took time, resulting in the delay of 120 days. In the second appeal, it is nowhere stated as to when the certified copy of the impugned judgment was applied and when it was delivered and how much time was consumed in the file moving from one table to another. No dates are forthcoming to enable this Court to see whether there is sufficient cause for condoning the delay occasioned.

9. No doubt substantial justice has to be considered while dealing with the applications seeking condonation of delay. Upon doing so, I find that after respondent was acquitted in the criminal case and upon his reinstatement into

service, appellants had initiated departmental case on same facts and then, had passed the order for dismissal of respondent from service. Adoption of such a course is contrary to the dictum of the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , which is as under:-

".....The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

10. In the considered opinion of this Court, the delay of 120 days" does not stand sufficiently explained and even on merits, appellants do not have a good case. Finding no perversity in the impugned order or the judgment of the trial court, this appeal is dismissed.

11. At this stage, learned counsel for respondent informs that respondent is bed-ridden, who had retired from service about five years ago and his monetary benefits, including the pensionary benefits, have been put on hold due to pendency of this appeal and the department be directed to release it expeditiously, as respondent has no other means to sustain himself.

12. Let the monetary benefits be released to respondent within a period of eight weeks from today. The concerned department be apprised of this judgment forthwith.

13. The appeal is accordingly disposed of.