
(1999) 03 GAU CK 0044

In the Gauhati High Court

Case No : Misc. Case No. 217 (T) of 1998 in M.A. (F) No. 223 of 1998

Union of India (UOI) and Another

APPELLANT

Vs

Sandhu Sons

RESPONDENT

Date of Decision : 18-03-1999

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1999) 3 GLT 610

Hon'ble Judges : D. Biswas, J; B.N. Singh Neelam, J

Bench : Division Bench

Advocate : K.K. Mahanta, C.G.S.C, for the Appellant; A.K. Bhattacharyya, for the Respondent

Judgement

B.N. Singh Neelam, J.—This Misc. case is so filed in connection with M.A.F. No. 223/98 so preferred by the Petitioner/Appellants Union of India making a prayer for condonation of delay of 890 days in preferring the appeal against the order dated 3.2.96 passed by the learned Asstt. District Judge, Jorhat in Misc. (Arbt) 89/94.

2. Heard Mr. K.K. Mahanta, learned C.G.S.C. representing the Petitioner/Appellant.

3. All the points so taken as good grounds for condoning the delay are pressed in to service. It is also submitted that delay in preferring the appeal is sufficiently explained and there was no negligence on the part of the Petitioner in making delay in preferring the appeal rather the same could not be filed as the clearance for preferring the appeal was to be taken from different heads of the offices, the offices being located at different places and matter had to pass through so many tables. It is also casually pointed out that even the Petitioner has decided as to initiate departmental proceeding against the Erreing personnel in not preferring the appeal in time. In support of this contention the prayer is that a liberal view be taken condoning the delay of 890 days. In this connection Mr. Mahanta, learned CGSC has banked upon 3 reported cases and they are 1995 (Suppl) 4

SCC 681 Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, Naubat Ram Sarma v. Addl. District Judge-II Moradabad and Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, By referring to the reported cases it is pointed out that test for determining the sufficiency for not preferring the appeal is whether the factual statement made was probable and acceptable. It is pointed out that the factual statements so made in this condonation petition was very much probable which be accepted condoning the delay and that a liberal approach should be adopted. Mr. Mahanta further pointed out that the word sufficient cause as finding place in Section 5 of the Limitation Act should receive liberal construction.

4. Mr. A.K. Bhattacharyya, learned Sr. Counsel representing the other side has vehemently opposed considering prayer for condoning the delay of 890 days in preferring the appeal for which has submitted that no sufficient casue is shown, hence the prayer so made for condoning the delay in preferring the appeal be thus not considered. In this connection Mr. Bahttacharyya learned Sr. Counsel has referred to a reported case State of Haryana Vs. Chandra Mani and others, He has also referred to Page 7 paragraph XII of this Misc. case so preferred by the Petitioner. It is submitted that since sufficient cause is not shown, the prayer for condoning the delay in preferring the appeal be thus not considered favourably. Appeal so preferred, it is further pointed out is hopelessly time barred and by condoning the delay when no sufficient cause is shown no step motherly treatment can be given to the present O.P.

5. After hearing both sides Lawyers, taking into consideration of the facts and circumstances discussed above, also after going through the reported cases so cited and in the background in the arguments so advanced by Mr. A.K. Bhattacharyya, learned Sr. Counsel for the O.P/Respondent we find much of strength in his argument so advanced.

6. Taking that view, the petition so filed for condonation of delay in preferring the appeal is thus not considered which is thus hereby rejected.

Since the delay is not condoned in preferring the appeal, no separate order need be passed in the main case.

This Misc. case stands accordingly disposed of.