
(2009) 02 P&H CK 0170
In the Punjab And Haryana At Chandigarh

Union of India (UOI)

APPELLANT

Vs

Dominic David and Others

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 154 PLR 472

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This application has been filed u/s 5 of the Limitation Act by the appellant for condonation of delay of 2956 days in filing the accompanying Regular Second Appeal.

2. Brief facts giving rise to this application are as under: (i) Respondent No. 1 filed Civil Suit No. 39 of 5.3.1987 claiming compensation/damages for the injuries suffered by him during the course of employment under the defendants i.e. the appellant and respondents No. 2 and 3. It was alleged in the suit that M/s. Sadhu Singh & Company Engineers & Contractors, were working for the construction of Chamera Diversion Tunnel. This work was assigned to the State Govt. by NHPC Chamera Unit with the consent of National Hydel Project Corporation. The work was allotted to M/s. Sadhu Singh and Company, Defendant No. 1 was also provided with the work by defendant No. 2 for the construction of Dam facility area. The plaintiff being a sub-contractor was given work by M/s. Sadhu Singh & Company for the construction of Chamera Diversion Tunnel and outlet portal. It was further alleged that defendant No. 1 was doing the blasting recklessly without taking precautions and norms under law and the rules for the safety of the persons who were working in the area which resulted in injuries to the workers employed by M/s. Sadhu Singh & Company. It was further alleged that the plaintiff received injuries due to negligence of defendant No. 1 who was working under defendants No. 2 and 3. Since defendant No. 1

was the agent of defendants No. 2 and 3, this suit was filed against all the three defendants. (ii) The suit was contested by defendant No. 1 by filing written statement stating therein that he was always working as per the instructions of defendants No. 2 and 3. The allegations made by the plaintiff were denied. (iii) Defendants No. 2 and 3 had taken the stand that there was no territorial jurisdiction of the Court as the alleged incident had taken place in village Chaurah, District Chamba, (HP) and defendant No. 2 had its Corporate Office in New Delhi and they do not reside at Chandigarh. It was also stated that the plaintiff was a sub-contractor of M/s. Sadhu Singh and Company and had no privity of contract with them. (iv) The trial Court (Sub Judge, 1st Class, Chandigarh) vide judgment and decree dated 21.1.1993 decreed the suit of the plaintiff-respondent for recovery of Rs. 5,29,200/- with proportionate costs and all the three defendants were held jointly and severally responsible to make the payment of the decretal amount. (v) Respondent No. 2 (defendant No. 1) filed an appeal challenging the judgment and decree dated 21.1.1993 passed by the trial Court. District Judge, Chandigarh vide judgment and decree dated 11.8.2000 dismissed the appeal except effecting a partial modification in the impugned judgment and decree of the trial Court to the effect that there was no cause of action against the National Hydel Project Corporation i.e. Respondent No. 3 (defendant No. 2) and it was held that defendants No. 1 and 3 i.e. Respondent No. 2 and the present appellant shall be liable to make the payment of the decretal amount jointly and severally. It is pertinent to mention at this stage that the applicant-appellant has neither filed any appeal nor cross-objections in the Lower Appellate Court challenging the judgment and decree dated 21.1.1993 passed by the trial Court.

3. The appellants have filed the present appeal challenging the judgment and decrees of the Courts below in this Court on 2.12.2008 i.e. after a delay of 2956 days along with the instant application for condoning the aforesaid delay in filing the present appeal. In the application filed for condonation of delay, it has been averred by the applicants that there was a confusion between the appellant and the National Hydro Electric Power Corporation as the appellant was of the view that they being proforma defendant in the suit filed by the plaintiff were not required to defend the case and therefore, had communicated to the NHPC to defend the matter safeguarding the interests of the Union of India. It was further stated that from the perusal of the facts of the case, it clearly reveals that Union of India has nothing to do with the dispute, being totally unconnected with the issues involved. Thus, it was averred that the delay is neither intentional nor wilful but for the above mentioned reasons and has prayed for condonation of delay in filing the appeal.

4. Learned Counsel for the applicant-appellant has vehemently argued that when the Government is an applicant, praying for condonation of delay, it is a common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the making, file pushing and passing the buck ethos, delay on the part of the State is less difficult to understand though

more difficult to approve but the State represents collective cause of community and in such circumstances, the appeals filed by the State should not be lost for such default unless the case is hopelessly without merit and, the appeals should be decided on merits . In support of his argument, learned Counsel for the appellant has relied upon the following paragraphs of the judgment of the Hon''ble Supreme Court in State of Haryana Vs. Chandra Mani and others, .

When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with note-making, file pushing and passing on the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise is a routine.

Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause of explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The court should decide the matters on merits unless the case is hopelessly without merit.

5. I have heard learned Counsel for the applicant-appellant. There is no dispute of the fact that on account of impersonal machinery and the inherited bureaucratic methodology, it is axiomatic that the decisions are taken by the Officers of the Government at a snail pace thereby causing considerable delay and therefore, certain amount of latitude is not impermissible and the expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach and the Court should decide the matters on merits unless the case is hopelessly without merit. However, in the aforesaid judgment, the Hon''ble Supreme Court has not laid down that the delay must be abandoned and such appeals should be decided on merits. What has been laid down is that expression "sufficient cause" for condonation of delay should be considered in a justice-oriented approach rather than the technical detection of the sufficient cause in explaining the delay.

6. In the case in hand, there is absolutely no explanation of the reasons which caused a delay of more than eight years in filing this appeal, much less sufficient. The only reason given in this application is that Union of India was of the view that they were not required to defend the case as they have nothing to do with

the dispute. The aforesaid explanation given by the appellant cannot, in any way, be justified as the trial Court had held the appellant liable jointly and severally along with other defendants. Not only this, the casual and negligent approach adopted by the applicant appellant in defending the matter can be judged from the fact that in spite of the fact that the trial Court held the appellant liable to make the payment of decretal amount yet the trial Court judgment was not challenged by the applicant-appellant. No justification at all has been even mentioned by the applicant in the application for condonation of delay in challenging the judgment and decree of the trial Court. In the absence of any appeal filed on behalf of the appellant challenging the judgment and decree of the Lower Appellate Court dated 11.8.2000, this appeal cannot be held to be maintainable. The Hon''ble Supreme Court of India in Pundlik Jalam Patil (D) by Lrs. v. Exe.Eng. Jalgaon Medium Project and Anr. 2008(4) R.C.R. (Civil) held as under:

Law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. A lethargic litigant cannot leisurely choose his own time in preferring appeal or application. If sufficient cause of excusing delay is shown discretion is given to the Court to condone the delay and admit the appeal, but party is not entitled to condonation of delay as a matter of right. When the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it.

Relying upon the Pundlik Jalam Patil (D) by Lrs.'s case (supra) and the reasons recorded above, I find no ground to condone the delay in filing the instant appeal. Application for condonation of delay is dismissed. Resultantly, the accompanying appeal filed by the appellant is also dismissed being time barred.