

(2002) 05 GAU CK 0023

In the Gauhati High Court

Case No : Misc. Application No. 7 of 2002 in Regular Second Appeal 1 of 2002

Union of India (UOI)

APPELLANT

Vs

Sh. H. Thauamvela and Another

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2003) 2 GLT 210

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : P.N. Choudhury, Addl. CGSC, for the Appellant; Michael Zo Thankhuma, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard Mr. P.N. Choudhury, learned Addl. CGSC for the applicants. Also heard Mr. Michael Zo Thankhuma, learned counsel for the Respondents.

2. This is an application preferred by the Union of India, supported by an affidavit for condoning the delay of 21 days in preferring the belated appeal. Explaining the delay of 21 days, the applicants have made the following contentions in paragraph 2 of this Misc. case :

"2. That however in filing the present second appeal there is a delay of 21 days from the expiry of the specified period of 90 days for filing such appeal for reasoned which are being stated below:

(i) That the present applicant organisation spreads through out the nook and corner of the country but its functioning is strictly centralised and even the smallest matter can be finally decided only by its central office situated at New Delhi.

(ii) That in the instant case too the matter relating to the filing of the present appeal is decided by the central office and for this the matter is first related to its

Task Force at Silchar which then refers the matter to Project Pushpak HQ from where the matter goes to DG, Border Roads and then to Border Road Development Board which is a part of Ministry of Surface Transport and finally the Ministry of Law is involved. Vetting of documents including draft applications/ Petitions are also taken up by following the said channel and the draft applications/petitions which is finally vetted by the Ministry of Law comes back by following the same channel and in this process a very good number of days is caused.

(iii) That further the Ld. First Appellate Court even on application for certain documents of the Court proceedings was reluctant to prepare and give the same to the Appellants herein thereby delaying the filing of the present appeal."

3. After going through the above contents, stated to be the sufficient cause and/ or adequate explanation for condonation of delay, I am not impressed a wee bit to record the same as a satisfactory, reasonable or even an appropriate explanation for seeking the condonation of delay though it is for only 21 days. The explanation so put forward patently reflects the casual and callous approach on the part of the applicants towards the delay matter. Such lapses of delay, I am sorry to say are not uncommon in the appeals/ petitions preferred by the Union of India. It Is the general experience that most of the appeal/petitions filed by the State/Union of India are quite often barred by time and the application for condonation of delay Is made in a most casual and routine manner without indicating the facts which would constitute sufficient cause to permit condonation of delay in accordance with law. Here the delay is only of 21 days. But the question is not with the days. What is needed to be looked into is the approach and attitude of the applicants towards the explanation of delay and what cogent and plausible ground they intend to advance to explain such delay. There Is nothing in the application for condonation of delay to indicate the factual position which would give rise to sufficient cause for such condonation.

4. Mr. P.N. Choudhury, learned Addl. CGSC appearing on behalf of the Union of India has forcefully contended that since delay is only of 21 days, the same may be condoned by taking a pragmatic view and equitable consideration to the factum of the case. In support of his argument, he has relied on a decision of the Apex Court reported in State of Haryana Vs. Chandra Mani and others, wherein the Hon''ble Apex Court condoned the delay of 109 days noticing the explanation made in the Petition for condonation to be the sufficient cause.

5. The Hon''ble Apex Court time and again has been observing that law of limitation has to be applied with all its rigours prescribed by the Statute and the Court has no power to extend the period of limitation on equitable grounds. In a decision in P.K. Ramachandran Vs. State of Kerala and Another, the Hon''ble Supreme Court held as under:

"6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to

extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained."

6. Considering the applications for condonation of delay filed by the Govt. whether the State or Union of India, the Hon"ble Apex Court in a catena of judicial pronouncement declined to allow the prayer for condonation. In C.W.T. v. Amateur Riders Club the Hon"ble Supreme Court dealing with an application for condonation preferred on behalf of the Government observed as follows :

"3. The explanation is Incapable of furnishing a judicially acceptable ground for condonation of delay. After the earlier observations of this Court made in several cases in the past, we hoped that the matters might improve. There seems to be no visible support for this optimism. There is a point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigants as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial re-taps. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest."

7. Again a Division Bench of this Court in Union of India v. Woodcrafts Products Ltd. reported in 2001 (1) GLT 34 while discussing an application for condonation preferred by Union of India held as follows :-

"Under the concept of welfare State, in order to promote social justice, it is the bounden duty of the State to protect and preserve the public interest and public fund. Since Public exchequer is incurring heavy expenses on the different departments of the State and its instrumentalities, it is incumbent upon them to be fast and prompt in discharging their duties and in carrying their responsibilities with due diligence. If there is good case on merit and the application for condonation of delay, unintentional or otherwise, filed by the State is not allowed, it is certain that damage will be caused to the public interest and public fund. Unfortunately, the officers of the State and its instrumentalities carry an impression that with each and every case, the delay caused in filing an appeal is bound to be condoned, taking it for granted on the basis of a few decisions where the delay has been condoned considering the facts of those cases where sufficient causes were shown and proved."

8. Be it noted that Chandra Mani's case (supra) as referred by the learned counsel for the applicants has also been discussed in the Woodcrafts case

(supra). There is no second opinion that in a matter regarding the condonation of delay in preferring any application or appeal, the Court is needed to go into the adequate explanation to hold that the same as "sufficient cause". In the instant case, a bare perusal of the explanations/grounds mentioned in paragraph 2 of the petition above noted, goes to show that the delay in question has not been sufficiently and adequately explained.

9. Having regard to the Judicial pronouncements above cited and upon hearing the learned counsel for the parties, I am of the view that no sufficient cause has been shown in this Misc. application necessitating the condonation of such delay and accordingly, I am disinclined to entertain this application.

10. Consequently this Misc.application is hereby rejected.