

(1969) 11 GAU CK 0011
In the Gauhati High Court
Case No : Civil Revision No. 21 of 1966

Union Territory of Tripura and others

APPELLANT

Vs

Umesh Chandra Das

RESPONDENT

Date of Decision : 12-11-1969

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1969) 11 GAU CK 0011

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : H.C. Nath, for the Appellant; J.K. Roy, for the Respondent

Judgement

R.S. Bindra, J.C.

1. This revision petition by the Union Territory of Tripura, the Chief Commissioner, the District Magistrate and the Sub-Divisional Officer, Sadar. Agartala, is directed against the order, dated 21-12-1965, of the Additional Subordinate Judge, Agartala, whereby he rejected an application of the present petitioners made u/s 5 of the Limitation Act for condonation of the delay in filing. Title Appeal No. 96 of 1962, and then dismissed that appeal as barred by time.

2. The relevant facts are that the suit of Umesh Chandra Das, the respondent, against the present petitioners was decreed by the trial Court by judgment dated 26-3-1962 though the decree was actually prepared and signed on 24-4-1962. The petitioners herein filed the appeal against that decree on 13-7-1962. Along with the memorandum of appeal the present petitioners filed an application under Sec. 5 of the Limitation Act praying for condonation of the delay in filing the appeal that application was supported by an affidavit. The facts mentioned in support of the prayer for condonation were that the Administration applied for getting certified copies of the judgment and the decree on 16-4-1962. that the copies were delivered on 8-5-1962, that on receipt of those copies the relevant records were collected from the office of the District Magistrate on 21st of May,

1962 by the then Judicial Secretary-Cum-Legal Remembrancer Shri T. P. Choudhury, and that before the latter could examine all the records to make up his mind he proceeded on leave with effect from 4th of June, 1962.

Shri T.P. Choudhury resumed duty on 25-6-1962 but he was reverted to his parent post with effect from 1-7-1962. However, before relinquishing charge he left a note that the appeal filed in the present case must be accompanied by an application u/s 5 of the Limitation Act. It was for the reason that he had not been able to find adequate time to examine all the records or the points of law involved during the short period at his disposal between 25th and 30th of June, 1962, and so the filing of appeal was bound to be delayed further. The new Judicial Secretary-Cum-Legal Remembrancer joined the post on 9-7-1962 and he too gave the opinion that the appeal be filed, accompanied by an application for condonation of delay. In para 8 of the application it was stated that the delay occasioned in filing the appeal was inevitable because of the circumstances arising out of the leave taken by Shri T.P. Choudhury, his reversion to the parent post, and the time taken by the new Judicial Secretary in assuming charge. The specific prayer made in that para was that the delay covered by the period from 17-6-1962 to 13-7-1962 be condoned.

3. Shri S.B. Laskar, Subordinate Judge, Agartala, with whom the appeal was pending, made an ex parte order on 6-9-1962 condoning the delay in filing the appeal. This was done after hearing the counsel for the appellants and taking into consideration various facts mentioned in the application for condonation which was supported by an affidavit. A direction was issued on that date, after admitting the appeal, that notice of the appeal be issued to the respondent the respondent entered appearance on 8-11-1962 through an Advocate. He moved an application on that date praying for time to file objections against the order dated 6-9-1962 condoning the delay. The Court permitted him to file the objections by the next date. The appeal came up before the Court thereafter on 13-12-1962. No objections were filed by the respondent by or on that date. The Subordinate Judge happened to be on leave on that date. Therefore, the Officer-in-Charge of the current duties of the Court adjourned the appeal to 22-1-1963 for settling the next date by the then presiding officer of the Court and for filing objections against the order of condonation.

When the appeal was taken up on 22-1-1963 by Shri S. B. Laskar he noticed that no objection against the condonation order had been filed and so he adjourned the appeal to 21-2-1963 for hearing thereof. However, the officer being busy with the Sessions case on 21-2-1963 he adjourned the appeal to 16-4-1963 and once again to 16-5-1963 for identical reason. On the latter date, the respondent filed a petition requesting for adjournment of the hearing. That prayer was granted and the hearing was postponed to 19-6-1963. Thereafter, as many as 17 adjournments were granted either because the officer was busy with more urgent work or prayer for adjournment was made by the counsel for the appellants. By 27-4-1965, a date fixed for hearing of the appeal Shri S. B. Laskar

was appointed Additional District & Sessions Judge and since his successor in the Court had not joined, there were four more adjournments. On 2-8-1965, Shri T.K. Pal; the District Judge, firstly brought the appeal on his own file and then transferred the same to the Court of Additional Subordinate Judge, Shri S. M. Ali, for disposal.

There were another four adjournments in the hearing of the appeal for reasons mentioned in the respective orders. Finally, the appeal was taken up for hearing on 15-12-1965. On that date, it appears, the respondent's counsel re-agitated the question of limitation. By order dated 21-12-1965, as mentioned already, Shri S.M. Ali rejected the application for condonation on the basis that there was delay of 36 days in filing the appeal but in the application prayer had been made for condoning delay of only 27 days, and as a consequence dismissed the appeal as barred by time. On 16-12-1965, the file reveals, the present petitioners made an application bringing to the notice of the Court that though the respondent had secured time on 8-11-62 for filing objections against the condonation order dated 6-9-1962, he had failed to do so and that on 22-1-1963 Shri S. B. Laskar, the Subordinate Judge, had taken note of that fact and then adjourned the case to 21-2-1963 for hearing of the appeal. In face of those facts, it was emphasised on behalf of the present petitioners, no notice should be taken of the objection raised by the respondent that the appeal was barred by time. Shri S. M. Ali it looks obvious from the order under revision, did not take that application or what was mentioned therein into consideration while dismissing the appeal on 21-12-1965.

4. Shri H. C. Nath, the Government Advocate, submitted during the course of arguments that in the background of orders dated 6-9-1962. 8-11-1962 and 22-1-1963 made by Shri S. B. Laskar it was not open to Shri S. M. Ali to permit the respondent" to reagitate the question of limitation on 15-12-1965 which was almost 3 years after the matter had been concluded. Shri J. K. Roy, appearing for the respondent, urged on the authority of *Krishnasami v. Ramasami*, AIR 1917 PC 179, that where an appeal filed beyond time is admitted ex parte after excusing delay without notice to the opposite party, the latter is entitled, at the hearing, to object to the admission and the Court can reopen the question and then decide whether there is sufficient cause for admitting the appeal. Shri H. C. Nath did not join issue with Shri J. K. Roy on the principle enunciated by the Privy Council in the cited case.

However, he urged that since the respondent had moved an application on 8-11-1962 for permission, to file objections against the condonation order, that since he had been granted an opportunity to do so by 13-12-1962 and he had not cared to file the objections, and that since when the appeal was taken up by the Court on 22-1-1963 it was mentioned in the order passed on that day that the respondent had failed to file any objections and so the arguments in the appeal shall be heard on 21-2-1963, it should be assumed that the respondent had dropped the idea of filing any objections against the condonation order and

the Court had made that assumption, without any protest on behalf of the respondent, while adjourning the appeal for hearing to 21-2-1963. Shri H. C. Nath further pointed out that despite a large number of adjournments during the three intervening years the respondent never exhibited any intention of agitating the correctness of the condonation order and as such Shri S. M. Ali had gone out of his way in permitting the respondent to reopen the question of limitation which had been concluded long time ago. I think these submissions of Shri H. C. Nath are quite weighty and so I find it difficult to brush them aside.

5. The Court very rightly permitted the respondent to challenge the correctness of the condonation order dated 6-9-1962. However, since the respondent did not avail of the opportunity to file the objections by 22-1-1963, nor entered any protest on 22-1-1963 when the appeal was fixed for hearing after making the note that he (the respondent) had not filed any objection against the condonation order, the dispute relating to the validity of the condonation order, dated 6-9-1962 must be taken to have come to an end. In such circumstances, Shri S.M. Ali went wrong in permitting the respondent to reopen the matter on 15-12-1965. I regret, in particular, that Shri S.M. Ali did not take note of all that had happened in the appeal before he took it up for hearing on 15-12-1965 and that he failed to make even a passing reference in his order dated 21-12-1965 to the application dated 16-12-1965 presented on behalf of the present petitioners. Therefore, the present revision petition must succeed on the basis that a dispute already concluded between the parties had been reopened at the instance of the respondent without adequate justification.

6. I am also not satisfied that no convincing case had been made out by the present petitioners for condonation of the delay. The petitioners had claimed exemption for the period that had elapsed between the date of the judgment of the trial Court and signing of the decree by that Court, as also for the period spent in securing the copies of the judgment and the decree. The first period comes to 29 days and the latter to 14 days-total 43 days. It was urged on behalf of the respondent that there was overlapping by 7 days between the two periods and as such the petitioners are not entitled to claim exemption of that overlapping period twice over. I may narrate facts to explain this aspect of the case. The judgment was delivered by the trial Court on 26-3-1962 but the decree sheet was signed on 24-4-1962. Application for copies of the judgment and the decree was made on 16-4-1962 and the copies were actually delivered on 8-5-1962. Obviously, the period between 16-4-1962 and 24-4-1962 is common to the two spells for which exemption had been claimed by the present petitioners. I agree that this cannot be permitted.

However, that does not mean that the petitioners had committed a mistake of fact in mentioning the period for condonation of the delay, they are estopped from praying that even if the delay was of more than 27 days in filing the appeal that should be condoned if a case for the same is made out. To confine the petitioners to the stand that they had claimed condonation for 29 days as against

the delay of 36 days would amount to taking too narrow and a technical view of the dispute. It was held by a Full Bench of Madras High Court in Krishna v. Chathappan, ILR (1890) Mad 269, that the words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. This view of the Madras High Court has received approval of the Supreme Court in the case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., . In the case of Kichilippa v, Ramanujam, (1902) ILR 25 Mad 166, a Division Bench of Madras High Court made the following pertinent observations:

"Sufficient cause" is evidently something more than "legally sufficient" or "sufficient according to the rules laid down in the law of limitation.

for, if any case fell within these rules it would be governed thereby as in the case of suits, and there would be no scope for the application of Section 5. "Sufficient cause" seems to mean not only those circumstances (such as the Court being closed, or time being spent in obtaining copies, or the party being a minor or insane) which the law expressly recognizes as extending the time, but also such circumstances as are not expressly recognized but which may appear to the Court to be reasonable looking to all the facts of the case." In view of this state of law. I feel satisfied that Shri S. M. Ali did not approach the subject of condonation of delay from the proper perspective and as such it is not surprising that he reached a wrong conclusion.

7. Shri S. M. Ali observed as under in the impugned order;-

The Government has to consult legal opinion before filing an appeal and generally the Legal Remembrancer attached to the Government is consulted before a legal action by the Government. The leave and the transfer of the Legal Remembrancer as stated in the petition for condonation supported by an affidavit caused the delay in filing the appeal which cannot be termed as negligence on the part of the Government in filing the appeal.

These observations make it clear that Shri S. M. Ali was prepared to give exemption to the Government for the entire period for which the services of the Judicial Secretary-Cum-Legal Remembrancer were not available to it. The Judicial Secretary Shri T. P. Choudhury proceeded on leave on 4th of June, 1962, and the new Officer joined the post on 9-7-1962. The period between the two dates comes to exactly 36 days. Therefore, on the principle enunciated by Shri S. M. Ali himself, the Government was entitled to condonation of delay for the entire period of 36 days. As such, even on merits there was sufficient cause for condoning the delay in filing the appeal.

8. As a result, this petition succeeds and on setting aside the order dated 21-12-1965 and the decree founded thereon I remand the case to that Court after condoning the delay in filing the appeal and with the direction that the appeal should now be heard on merits. Taking all the circumstances into

consideration, I have decided to leave the parties to bear their own costs in this Court and order accordingly.