
(2013) 11 MP CK 0024
In the Madhya Pradesh High Court
Case No : MCC No. 1362 of 2012

Usha Bai

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 MP CK 0024

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Yogendra Gollandaz, for the Appellant; Amit Kumar Sharma, PL for the State, for the Respondent

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—Heard.

Applicant has filed this petition for restoration of W.P. No. 1978/2000 which has been dismissed for want of prosecution vide order dated 14.7.06 along with IA No. 13463/12 an application for condoning the delay in filing this petition as the same is filed barred by 6 years and 86 days as reported by the office.

Applicant's counsel after taking me through the averments of the IA said that considering the age of the applicant i.e. 75 years, being old woman and senior citizen, her physical position and the poverty, the alleged delay in filing the petition be condoned. In continuation he said that earlier she engaged some other counsel who did not appear in the matter to protect her interest consequently the petition was dismissed for want of prosecution. With these submissions he prayed that considering the aforesaid cause as sufficient as per requirement of section 5 of the Limitation Act, by allowing the IA, the alleged delay be condoned.

2. The aforesaid prayer is opposed by the State counsel saying that in view of the various proceedings of the original writ petition according to which on various dates since 24.3.2000 till dismissal on 14.7.06, no one was appeared to

prosecute this petition and considering such circumstance, the petition was dismissed for want of prosecution so looking to such conduct of the petitioner in the aforesaid writ petition so also in the lack of sufficient explanation to condone the aforesaid long delay in filing this petition, mere on the aforesaid ground of illness, the old age and the financial scarcity of the applicant could not be treated to be the sufficient cause for condoning the alleged delay as per requirement of section 5 of the Limitation Act and prayed for dismissal of this IA along with the petition for restoration of the writ petition as barred by time.

3. Having heard the counsel, keeping in view the arguments advanced, I have carefully gone through the averments of the IA, it is apparent that in entire application, no proper explanation for condoning the delay of 6 years and 86 days has been mentioned. Even the concerning date on which the applicant had consulted to her Advocate and came to know about dismissal of the writ petition has not been mentioned. Such application has been filed in a very casual manner by stating some emotional grounds rather than the grounds permissible under the law. So, firstly in the lack of proper explanation of long delay in the application and the affidavit attached with it, the cause stated in the same could not be treated to be sufficient as per requirement of section 5 of the Limitation Act for condoning the alleged delay.

4. Apart the aforesaid, I have also gone through the proceedings of aforesaid writ petition according to which since 24.3.2000 till 14.7.06 on which the petition was dismissed for want of prosecution near about 8 dates were fixed but no one was appeared to prosecute such petition on behalf of the applicant on any of such date and considering such conduct also the dismissal order dated 14.7.06 was passed. So, in view of such conduct also, the applicant does not deserve for extending the relief to condone the aforesaid delay in filing the petition. It is settled proposition of the law that whenever and wherever under prescribed period the requisite proceeding under the right is not filed by a party then after expiration of such period a valuable right is created in favor of other parties and such right could not be curtailed on the basis of any flimsy or insufficient grounds or unless the compelling circumstances are available in the matter which is not found in the present matter.

My aforesaid approach is based on the decision of the Apex Court in the matter of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., in which it was held as under:--

In construing S.5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. Placitum

In view of the aforesaid discussion, it is held that the applicant has failed to prove any sufficient cause as per requirement of section 5 of the Limitation Act for condoning the aforesaid long delay in filing the petition for restoration. Consequently, the IA deserves to be and is hereby dismissed. In view of such dismissal, the annexed petition (MCC) being barred by time is also dismissed.