

The Punjabi University, Etc.

Vs

Acharya Swami Ganesh and Another

Civil Appeals Nos. 2056-2057 of 1971

(G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

07.03.1972

JUDGMENT

HEGDE, J. -

1. The only question arising for decision in these appeals by special leave is whether the High Court was justified in rejecting the application of the appellants in these appeals seeking condonation of the delay of two days in filing the appeal.

2. The facts of the case briefly stated are as follows : The Punjab Government at the instance of the Punjabi University acquired certain lands under the provisions of the Land Acquisition Act. The acquired lands were valued by the Land Acquisition Officer at Rs. 76,029.15 P. At the instance of the respondent the matter was referred to the District Judge under Section 18 of the Land Acquisition Act. The learned District Judge enhanced the compensation payable to Rs. 2,97,019.15 P. The Punjab Government and the Punjabi University wanted to file an appeal against that order. The Judgment of the District Judge was delivered on October 31, 1970. The Punjabi University applied for a copy of the decree and the Judgment on November 18, 1970. The copies were made available on November 27, 1970. The last day for filing the appeal was February 8, 1971. The appeal was actually filed on February 10, 1971. Hence, there was a delay of two days. Along with the appeal an application was filed under Section 5 of the Limitation Act praying for the condonation of the delay in filing the appeal. The appeal is said to have been filed jointly by the Punjab Government and the Punjabi University.

3. The reasons given in support of the application under Section 5 of the Limitation Act are as follows : One Atma Ram was the counsel for the Punjabi University. He had been instructed by the Punjabi University, to file the appeal. A sum of Rs. 5,000/- had been paid to the Stamp vender on February 1, 1971, itself for purchasing the necessary Court-fee stamps. Necessary court-fee stamps had been purchased on February 2, 1971. According to Mr. Atma Ram, by some miscalculation he had noted in his brief that the last day for filing the appeal was February 11, 1971. He had sent a telegram to the Registrar of the Punjabi University on February 9, 1971, informing him that he should come down immediately to Chandigarh as the appeal had to be filed by February 11, 1971. He had also informed him by telegram that the Government's sanction must be obtained by that date. The Registrar of the University went over to Chandigarh on February 10, 1971 and the appeal was filed on the same date. According to the appellants the delay in filing the appeal was due to the mistaken mis-calculation made by Mr. Atma Ram. Mr. Atma Ram has filed an affidavit wherein he has stated that the appeal was filed two day after the period of limitation entirely because of his mistake. The learned Judges of the High Court have not disbelieved the version given by Mr. Atma Ram. On the other hand, they have opined that the right to file the appeal was primarily that of the

Punjab Government and the Punjab Government has not given sufficient reason for their delay in filing the appeal. It may be noted that the party which was essentially interested in filing the appeal was the Punjabi University. It had to pay the compensation for the lands acquired. Therefore, there was nothing surprising if the Government had left the matters in the hands of the Punjabi University. The Punjab Government was only fighting the case for the benefit of Punjabi University. The facts stated by Mr. Atma Ram in his affidavit are highly probable and we see no reason to disbelieve the version given by him. If the version is believed, as we do, then it affords a good ground for condoning the delay in filing the appeal. It is true that Mr. Atma Ram committed a mistake in his calculation. But that is not the same thing as negligence. In matters of calculation it is common knowledge that people do commit mistakes. They are bona fide mistakes and those mistakes have got to be taken note of by the Courts in considering whether the delay in filing the appeal should be condoned or not. It has been repeatedly held by Courts that a mistake by a lawyer is a good ground for condoning the delay in filing the appeal. Quite recently this very question came up for consideration by this Court in Civil Appeals Nos. 821-823 of 1968. ([1972] 1 SCC 366). Dealing with that question this Court observed :

"It may be, that the State was not properly advised regarding the remedy to be adopted to challenge the judgment in the Land Acquisition Reference Cases. But, as pointed out by the Judicial Committee in *Kunwar Rajendra Singh v. Rai Rajeshwar Bali and Others*, (AIR 1937 PC 276) if a party had acted in a particular manner on a wrong advice given by his Legal Adviser, he cannot be held guilty of negligence so as to disentitle the part to plead sufficient cause under Section 5 of the Limitation Act. In fact the Judicial Committee observes as follows :

'Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice.'

The advice given by the lawyer to file applications under Article 227, in our opinion, is also a circumstances to be taken into account in considering whether the appellant has shown sufficient cause."

4. From the facts found above it is clear that the appeal came to be filed two days after the period of limitation solely because of the wrong calculation made by Mr. Atma Ram.

5. It was urged on behalf of the respondent that the Punjab Government cannot take advantage of the mistake committed by Mr. Atma Ram. It has not given any explanation of its own for not filing the appeal within time. This contention does not appeal to us. As mentioned earlier, Punjab Government had evidently left the matters in the hands of the Punjabi University which was the party really interested. It depended entirely on the Punjabi University. We see no reason why that course should be found to be improper.

6. For the reasons mentioned above these appeals are allowed and the order of the High Court set aside. The High Court is directed to admit the appeals and dispose of the same in accordance with law. No costs.

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