

Smt. Sudama Devi

Vs

Commissioner and Others

Civil Appeal No. 574 of 1982

(P.N. Bhagwati, E.S. Venkataramiah JJ)

14.01.1983

JUDGMENT

We are of the view that so far as writ petition under Article 226 of the Constitution is concerned, there can be no hard and fast rule of 90 days by way of period of limitation but the general rule of laches alone can be applied and this must necessarily depend on the facts and circumstances of each case. The High Court has said in its order that "the writ petition was beyond time by 136 days. Neither the explanation of 136 days nor the explanation for filing it today, was given. " This view does not appear to be correct because the High Court has proceeded on the assumption that there is a period of limitation of 90 days and unless sufficient cause is shown as contemplated under Section 5 of the Limitation Act a writ petition filed after the expiration of 90 days is liable to be rejected. This assumption is wholly unjustified. There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner. We would, therefore, set aside the order of the High Court and remand the writ petition to the High Court so that the High Court may dispose it of on merits in accordance with law. We accordingly allow the appeal, set aside the judgment and order of the High Court and direct that the writ petition may be disposed of by the High Court on merits in accordance with law. There will be no order as to costs.

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