

**SUPREME COURT OF INDIA**

State of Kerala

Vs.

M.G. Presanna

C.A.No.189-190 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

07.01.2011

**ORDER**

1. Mr. Nishe Rajen Shonker, learned counsel appears for the respondent on caveat and waives further notice. Leave granted. Heard.

2. A Writ Petition filed by the respondent was allowed by a learned Single Judge of the Kerala High Court, by order dated 8.4.2009. The appellants filed a review petition in regard to the said order. There was a delay of 305 days in filing the review petition. The Learned single Judge heard the application for condonation of delay and by order dated 1.3.2010 condoned the delay in filing review petition. Ultimately by order dated 9.4.2010, he dismissed the review petition. Thereafter, the appellants filed a writ appeal against the order dated 8.4.2009 of the learned single Judge. A Division Bench of the High Court has dismissed the writ appeal on the ground of delay of 342 days in filing the writ appeal.

3. The appellants contended that the review petition filed by them in respect of the learned single Judge's order dated 8.4.2009, was disposed of only on 9.4.2010 and therefore the period spent till 9.4.2010 ought to have been treated as having been properly explained and if that period was excluded, there was no delay in filing the writ appeal. The Division Bench rejected the said contention by holding that even though delay of 305 days in filing the review petition might have been condoned by the learned single Judge, that cannot be treated as sufficient cause for condoning the delay in filing the writ appeal. The said order is challenged in this appeal by special leave.

4. It is true that technically the Division Bench was not bound to accept the period in respect of which delay in filing the review petition had been condoned by the learned single Judge, as a period in regard to which sufficient cause was made out for condoning the delay, while considering the question of delay, in filing the writ appeal. That is because the learned single Judge was dealing with delay in filing the review petition, whereas the Division Bench was dealing in filing the writ appeal. Nevertheless, if the delay of 305 days in filing the review petition had been condoned by the learned single Judge, as having been satisfactorily

explained and thereafter the review petition had been dismissed without prejudice to the right to file an appeal, the Division Bench in all fairness ought to have excluded the entire period upto the date of disposal of the review petition, as a period bona fide spent in pursuing other remedies. Of course, the position would be different if the Division Bench had found that filing of the review petition was not for bonafide reasons or there were other reasons to suspect the bonafides of the appellant. Be that as it may. We are of the view that on the facts of this case, the period upto the dismissal of the review petition, which was filed and prosecuted bonafide by the State, ought to have been treated as satisfactorily explained, while considering the explanation for the delay, and the delay in filing the appeal ought to have been condoned.

5. In view of the above, we allow these appeals, set aside the order dated 22.7.2010 of the Division Bench, restore the writ appeal against the order dated 8.4.2009 to the file of the High Court, condone the delay in filing the said appeal and request the High Court to dispose of the writ appeal on merits expeditiously.