

S. Ganesharaju (D) Thr.Lrs. & Another

v.

Narasamma (D) Thr.Lrs. & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE DEEPAK VERMA HON'BLE MR. JUSTICE K.S.P.
RADHAKRISHNAN

Civil Appeal No. 3306 Of 2012 (Arising Out Of Slp(C). No. Slp(C). No. 26538
Of 2009) | 27-03-2012

1. Delay in filing and refiling special leave petitions is condoned.

SLP(C)No.26538 of 2009:

2. Leave granted. The Appellants were Defendants along with other Respondents before XXII Additional City Civil Judge, Bangalore City in O.S. No.3684 of 1992 decided on 13.7.2005. The said suit was filed by S. Chandra Raju and others claiming partition with regard to suit property. The suit was dismissed by the Trial Court. Against it, Plaintiffs preferred R.F.A. No.1476 of 2005 in the High Court of Karnataka at Bangalore, which came to be disposed of by learned Single Judge on 15.7.2008.

3. The relevant operative part of the said order is reproduced hereinbelow:

"10. Liberty is reserved to the Plaintiffs representing the branch of S. Munuswamyraju to approach the Bangalore Development Authority for re-conveyance of site No.777 and Defendants 1(a) to (g) in respect of site No.777A. As per the request of S. Narasaraju the then CITB re-conveyed the site No.290A in favour of his daughter the 4th Defendant herein. The Plaintiffs and other Defendants cannot have any right in respect of site No.290A re-conveyed to 4th Defendant. So also, the Defendants cannot have any objections for the Plaintiffs to claim site No.777 with the Bangalore Development Authority if they are so entitled according to law. Similarly, the Plaintiffs and

other Defendants cannot have any objection for Defendants 1(a) to (g) to claim site No.777A with the BDA if they are so entitled and in accordance with law.

With the above observation, the appeal is hereby dismissed confirming the impugned judgment and decree of the trial Court. Parties to bear their own cost."

4. The Learned Single Judge also made a reference with regard to the Agreement said to have been entered into between CITB and S. Narasaraju with regard to agreeing to reconvey three sites bearing No.290A, 777 and 777A.

5. The basic and foremost submission of learned Senior Counsel appearing for Appellants before us was that the present Appellants were not parties to the said Agreement and in any case, the said Agreement was not binding on them. Since the appeal of the Plaintiffs came to be disposed of with certain observations, as mentioned hereinabove, parties were left open to approach the Bangalore Development Authority to work out their remedies, if they are so entitled to. Feeling aggrieved thereof, the Appellants, who were arrayed as Defendants in the Suit, filed Review Petition No.369 of 2008. Said Review was barred by 53 days. For condonation of delay, they have filed I.A. No.1 of 2008 under Section 5 of the Limitation Act, 1963, praying therein that delay may be condoned and Review Petition be heard on merits.

6. It is pertinent to mention here that none of the Respondents herein had opposed the said prayer of the Appellants seeking condonation of delay as they had not filed any counter affidavit to the affidavit filed by the Appellants in support of their interlocutory application. However, still learned Single Judge not only proceeded to dismiss Interlocutory Application No.1 of 2008 filed by the Appellants under Section 5 of the Limitation Act, but also casually touched the merits of the matter and said that no case has been made out to entertain the Review Petition. It is against this order, the Appellants are before us.

7. We have accordingly heard Mr. H. Subramanya Jois, learned Senior Counsel appearing for the Appellants and Mr. P. Viswanatha Shetty, learned Senior

Counsel appearing for Respondent No.15 and Dr. G.C. Bharuka, learned Senior Counsel appearing for other Respondents.

8. We have also critically gone through the averments of I.A. No.1 of 2008 to find out ourselves if Appellants have been able to explain delay of 53 days satisfactorily or not and if sufficient cause has been shown by them. After having gone through the same, we are more than satisfied that delay has been explained properly and to our satisfaction. It reflects that sufficient cause was shown and proved before learned Single Judge. It is also to be noted that delay was only for 53 days, which would certainly not fall in the category of exorbitant or inordinate delay. If delay of 53 days is not condoned and the matter is not heard on merits, then it would tantamount to rendering injustice to the Appellants, who were seeking condonation of delay. Looking to short delay, as a routine, it should have been condoned and the matter should have been heard on merits.

9. Not only this, learned Single Judge has even touched the matter on merits, which was not required to be done as the basic ground on which the Review was filed by the Appellants was not considered by the learned Single Judge. Thus, the Appellants have been put to dual hardship. On the one hand, the delay has not been condoned and on the other hand even the merits have been touched, for which no arguments had been advanced by the learned counsel for the Appellants.

10. Such a practice to be adopted by courts, while deciding Application filed under Section 5 of the Indian Limitation Act, especially while rejecting the same and yet touching the merits of the matter has been deprecated by this Court. [See : 2007 (5) SCALE 30 S. V. Matha Prasad vs. Lalchand Meghraj & Ors.]. This Court has given the following direction to be followed, which reads as thus : (SCC. P. 775, para 9)

"9.By the impugned judgment, the Division Bench has not only condoned the delay but taken a decision on merits as well. We are of the opinion that the second exercise was not justified as the only issue before the Division Bench was the question of limitation. We, accordingly, set aside the judgment of the Division Bench to the extent that it goes on to the merits of the controversy but maintain it in so far that it deals with the question of limitation."

11. After giving our anxious and careful consideration to the whole matter, we are of the considered opinion that impugned order passed by the learned Single Judge cannot be sustained in law.

12. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless Respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

13. The Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that Appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily.

15. Thus, impugned order is hereby set aside and quashed. As a necessary consequence thereof, the matter is to be remitted to the learned Single Judge so that it can now be heard on merits, in accordance with law. Meaning thereby, the delay stands hereby condoned and the arguments would be confined only to

the merits of Review Petition. Since the matter is old, we request the parties to appear before the learned Single Judge tentatively on 29th May, 2012. The Registrar General of the said Court would get it listed before the learned Single Judge, who had decided the main matter and it be listed as per his convenience, because it is a Review Petition. In case learned Single Judge is sitting in some other combination, then some other suitable date from the learned Single Judge be ascertained.

16. With the aforesaid directions, impugned order dated 12.3.2009 passed by learned Single Judge of the High Court in R.P. No.369 of 2008 is set aside and the Civil Appeal is allowed, but with no order as to costs.

SLP(C)No.26537 of 2009:

17. In view of above, SLP(C)No.26537 of 2009 filed against order dated 15.7.2008 passed by learned Single Judge of the High Court in R.F.A. No.1476 of 2005 stands disposed of.

18. The Registry is directed to remit a copy of this order to Karnataka High Court forthwith.