

B. Madhuri Goud

v.

B. Damodar Reddy

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADH

Civil Appeal No. 4855 Of 2012 (Special Leave Petition (Civil) No. 29900 Of 2011) | 03-07-2012

1. Leave granted.

2. The appellant has questioned the correctness of order dated 11.3.2011 passed by the learned Single Judge of the Andhra Pradesh High Court whereby he condoned 1236 days delay in filing of appeal by the respondent against judgment and decree dated 18.8.2006 passed by V Senior Civil Judge, City Civil Court, Hyderabad (hereinafter referred to as, 'the trial Court').

3. After purchasing the suit property from the Andhra Pradesh Housing Board, the appellant filed OS No.381 of 2006 for delivery of possession and mesne profits. The trial Court decreed the suit vide ex-parte judgment dated 18.8.2006. In the execution proceedings, the respondent was evicted from the suit premises. After about one year he filed IA No.174 of 2007 under Order IX Rule 13 CPC for setting aside ex-parte decree. The same was dismissed by the trial Court vide order dated 20.2.2008. Civil Miscellaneous Appeal No.341 of 2008 filed by the respondent was dismissed by the High Court vide judgment dated 11.12.2008.

4. After almost four years of the passing of ex-parte decree by the trial Court and one year and eight months of the dismissal of CMA No.341 of 2008 by the High Court, the respondent filed an appeal under Section 96 CPC. He also filed an application for condonation of 1236 days delay by stating that he handed over the papers to the counsel on 10.1.2009 for the purpose of preparing the grounds of appeal but the certified copies of the documents were misplaced by the office of the Advocate and the same could not be traced despite best efforts and further that on 2.3.2010, the counsel discovered that the documents had been inadvertently tagged with the record of A.S. No.200/2001.

5. Learned Single Judge of the High Court accepted the respondent's explanation and condoned the delay by observing that there were some latches on the part of the counsel but the respondent cannot be penalised for the same.

6. We have heard learned counsel for the parties. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

7. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years Courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.

8. In *Collector, Land Acquisition v. Katiji* (1987) 2 SCC 107 this Court made a departure from the earlier judgments in which strict interpretation was placed on the expression "sufficient cause" and observed:

"The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

9. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.

10. In *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123, on which reliance was placed by learned counsel for the respondent, this Court observed:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of

discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

* * *

"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

11. In *P.K. Ramachandran v. State of Kerala* (1997) 7 SCC 556 this Court reversed the order passed by the High Court for condonation of 565 days delay in filing of an appeal by the State against the decree passed by the Subordinate Court and observed:

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds."

12. In *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* (2012) 5 SCC 157 this Court referred to some of the judicial precedents and observed:

"What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost."

"What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

13. In the light of the propositions laid down in the aforementioned judgments we shall now examine whether the explanation given by the respondent for 1236 days delay had any semblance of credibility and the learned Single Judge of the High Court rightly exercised the discretion vested in him under Section 5 of the Limitation Act.

14. In paragraphs 2 to 4 of the additional affidavit filed by him in support of the application for condonation of delay the respondent averred as under:

"2. I submit that filed the above Appeal being aggrieved by the Ex-parte Decree dated 18.8.2006 made in O.S. No.381/2006 on the file of the Hon'ble V Senior Civil Judge, City Civil Court, Hyderabad, along with an application to condone the delay in filing the above appeal. I crave leave of this Hon'ble Court to read the grounds of appeal and the affidavit filed along with delay petition as part and parcel of this affidavit."

"3. I submit that on 28.6.2009 the above matter was listed for hearing. During the hearing of the matter, it emerged that due to inadvertent delay from the date of dismissal of C.M.A. to filing of the present appeal is not properly explained. At our request for filing a better affidavit, explaining the delay, the matter was adjourned which is neither intentional nor wanton."

"4. I submit that after dismissal of the C.M.A., my Counsel asked me to obtain certified copies of exhibits marked in the suit under appeal i.e., Settlement of Summons, Show Cause Notice, Market Value Certificate etc. to enable us to file the appeal. On 20.12.2008, I applied for the certified copies of the above documents before the Hon'ble Trial Court. On 9.1.2009 the same were furnished to me. On 10.1.2009, I handed over the same to my Counsel with instructions to prepare the appeal grounds. However, the certified copies of the document were misplaced by the office of my counsel and the same could not be traced out inspite of their best efforts. On 2.3.2010, while my Counsel for preparing for arguments in A.S. No.200/2001, he noticed that the certified copies of the documents were inadvertently tagged to it. On 3.3.2010, my Counsel prepared the draft appeal grounds and the delay petition and informed me to sign on the same. Thus, the same could not be filed till 5.3.2010. Due to the above mentioned reasons, I could not file the same for all these days for all these days. Hence, the delay of 1236 days in filing this appeal, which is neither intentional nor wanton,

but it was beyond my control. If the delay is not condoned. I shall suffer grave and irreparable loss, which cannot be compensated."

15. A careful reading of the above extracted averments makes it clear that even though the respondent was very much conscious of the fact that the appeal filed by him against order dated 20.2.2008 passed by the trial Court had been dismissed by the High Court on 11.12.2008 and he had obtained certified copies of the documents, which are said to have handed over to the counsel on 10.1.2009, he did not make any effort to contact the concerned advocate till the first week of March, 2010 to ascertain the fate of the appeal supposed to have been filed by him against the judgment and decree dated 18.8.2006. Not only this, the application and affidavit filed by him are conspicuously silent about the name of the advocate to whom the papers were entrusted for the purpose of preparing the grounds of appeal. The affidavit of the concerned advocate was also not filed.

16. In our view, if there was any iota of truth in the respondent's story that the certified copies of the documents were misplaced by the office of his counsel and the same were noticed by the counsel on 2.3.2010 while preparing arguments in A.S. No.200/2001, the minimum which he was expected to do was to file an affidavit of the concerned advocate. Why he did not do so has not been explained by the respondent. Notwithstanding this, the learned Single Judge assumed that the counsel to whom the appellant is said to have handed over the documents was remiss in the performance of his duties and on that account, the same got tagged with another file resulting in the delay. This is evinced from the following observations made in the impugned order:

"The explanation for the delay is that the petitioner has entrusted the bundle to his counsel so as to prefer an appeal, but the counsel seems to have kept the bundle in another bundle i.e., in A.S.No.200 of 2001 and the same was noticed when the said case came up for hearing. No doubt, there are some laches on the part of the counsel for the petitioner in keeping the record in another bundle and in filing the appeal in time immediately after the judgment and decree of the trial Court, even though the petitioner has entrusted the bundle to him to enable him to file an appeal, but those laches cannot be attributable to the petitioner. For the laches committed by the counsel, the party cannot be made to suffer. Therefore, the delay has been satisfactorily explained."

17. In our view, the statement made by the respondent about misplacement of the documents by the office of the Advocate was vague to the core and the learned Single Judge committed grave error by entertaining the fanciful explanation given for 1236 days delay.

18. In the result, the appeal is allowed. The impugned order is set aside. The application filed by the respondent for condonation of 1236 days delay in filing appeal against the judgment and decree of the trial Court shall stand dismissed.