

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Bal Kishan Mathur (D) Thr.

C.A.No.8243 of 2013

(Sudhansu Jyoti Mukhopadhaya and Ranjan Gogoi JJ.)

16.09.2013

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.

2. Though the only issue that arises in this appeal is with regard to the correctness of the order dated 12.11.2008 passed by the Division Bench of the Rajasthan High Court declining to condone the delay that had occurred in the institution of Special Appeal Writ No.02033 of 2007 by the appellant, a brief conspectus of the relevant facts would be appropriate.

3. An order of eviction dated 17.12.1980 under the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 was passed by the Estate Officer against the respondent (Now represented by his legal heirs). The respondent was unsuccessful in the challenge made against the said order in an appeal before the learned District Judge. Thereafter, the respondent filed an application for review which was transferred to the court of learned Additional District Judge who heard the matter and decided the same on 17.12.1993 as if he was hearing an appeal against the initial order of the Estate Officer dated 17.12.1980. The State of Rajasthan, therefore, moved Civil Writ Petition No.3503 of 1995 before the High Court which was dismissed by the learned Single Judge holding that the tenancy of the respondent could not be determined except by following the provisions of Sections 106 and 111 of the Transfer of Property Act, 1882, as already held in another connected case.

4. Aggrieved by the said order of the learned Single Judge of the High Court dated 19.05.2006, D.B. Special Appeal Writ No.02033 of 2007 was filed by the State on 08.11.2006. The office reported a delay of 98 days in filing of the appeal. Considering the explanation furnished by the State for the delay that had occurred, the Division Bench took note of the statement made by the appellant in the condonation application that the appeal was filed on 02.11.2006 whereas it was actually filed on 08.11.2006. The Division Bench, therefore, thought it proper to conclude that the period of six days between 02.11.2006 and 08.11.2006 had not been explained. Accordingly, the delay in filing the D.B. Special Appeal Writ was not condoned. Resultantly, the appeal was dismissed. Aggrieved, the State has filed the present appeal.

5. We have heard Dr. Manish Singhvi, learned Additional Advocate General of Rajasthan for the appellant and Shri Shiv Sagar Tiwari, learned counsel for the respondent.

6. Learned counsel appearing for the appellant has urged that mention of the date 2.11.2006 as the date of filing of the appeal was inadvertent. Alternatively, it is contended that even if it is assumed that the State had failed to offer any explanation for filing the appeal on 08.11.2006 after making a statement that the same was filed on 02.11.2006, the period of six days' is too insignificant to justify the view taken by the High Court. Learned counsel has also tried to take us to the merits of the appeal filed by the State to show that the order of the learned Single Judge under challenge in the appeal is ex-facie incorrect being contrary to several pronouncements of this Court. It is, therefore, urged that the impugned order would justify interference so as to ensure that the Appeal filed by the State is heard on merits.

7. On the other hand, learned counsel appearing for the respondent has submitted that the learned Single Judge while passing the order dated 19.05.2006 in the Civil Writ Petition No.3503 of 1995 had exercised jurisdiction under Article 227 of the Constitution. Under the provisions of the Rajasthan High Court Ordinance 1949 and the Rules framed thereunder providing for intra court appeals, appeals are not contemplated against orders passed by a learned Single Judge in exercise of jurisdiction under Article 227. On the aforesaid basis it is submitted that the D.B. Special Appeal filed by the State before the High Court was not maintainable. The initial order of the learned Single Judge dated 19.05.2006 not being subject to any challenge in the present appeal before this Court, no interference is called for.

8. Having considered the rival submissions advanced on behalf of the parties, we deem it necessary to make it clear that in the present appeal we would not in any way be concerned with the merits of the dispute between the parties. As already observed by us in the earlier part of this order it is only the question of condonation of delay in filing the D.B. Special Appeal that would require our consideration. The facts in this regard have already been noticed.

9. It is correct that condonation of delay cannot be a matter of course; it is also correct that in seeking such condonation the State cannot claim any preferential or special treatment. However, in situation where there has been no gross negligence or deliberate inaction or lack of bonafides this Court has always taken a broad and liberal view so as to advance substantial justice instead of terminating a proceeding on a technical ground like limitation. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third party rights had become embedded during the interregnum the Courts should lean in favour of condonation. Our observations in *Postmaster General v. Living Media India Ltd.*[1] and *Amalendu Kumar Bera v. State of West Bengal*[2] do not strike any discordant note and have to be understood in the context of facts of the respective cases.

Postmaster General v. Living Media India Ltd. (supra)

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an

anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

Amalendu Kumar Bera v. State of West Bengal (supra)

“10. ... True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there are serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the decree-holder puts the decree in execution. ... Merely because the respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of “sufficient cause” delay shall not be condoned.”

10. In the present case, the High Court seems to have accepted the explanation for the delay upto 02.11.2006. Thereafter, taking into account the statement made in the condonation application that the appeal has been filed on 02.11.2006, whereas it was actually filed on 08.11.2006, the High Court refused to condone the delay of the period between the two dates i.e. six days. Reading the relevant paragraph of the condonation application it is obvious to us that there is an apparent error or mix up in the dates furnished by the State in its application for condonation of delay. The mention of the date 2.11.2006 in para 5 of the condonation application is by hand. Obviously it is an error occasioned by inadvertence. The date that should have been mentioned is 8.11.2006 and not 2.11.2006. The inadvertence or even if the above act is construed to be negligent, in our considered view, cannot be sufficient to justify a refusal of the adjudication of the appeal filed by the State on merits which is the ultimate consequence of the impugned order. Taking into account the totality of the facts of the case, particularly the period of the delay, we are of the view that in the present case, the High Court should have condoned the delay. The same not having been done we deem it appropriate to allow the appeal and set aside the order dated 12.11.2008 passed by the Division Bench of the High Court; condone the delay that had occurred in filing of D.B. Special Appeal Writ No.02033 of 2007 and remit the matter back to the High Court for disposal on merits. We make it clear that we have not expressed any opinion on the merits of the case of the parties before us.

[1] (2012) 3 SCC 563

[2] (2013) 4 SCC 52