

RAJASTHAN HIGH COURT

Trilok Chand Saini

Vs.

State, (Rajasthan)

D.B. Special Appeal (Writ) No. 567 of 2003
(S.K. Keshote and K.S. Rathore, JJ.)

27.05.2003

JUDGMENT

S.K. Keshote, J.

1. The matter is placed on the board on the application of the appellant under Section 5 of the Limitation Act filed for condonation of delay of 197 days. On the notice to the respondents of this Application, Sri S.C. Purohit, Dy. Government Advocate, put appearance on their behalf and strongly opposed the application. He filed reply to the application also dated 8.5.2003 after completion of the arguments.

2. At the outset, it is not gainsay to state and of which judicial notice can also be taken that almost all the appeals filed on behalf of the State of Rajasthan are presented after expiry of the prescribed period of limitation. When it is the position of the State of Rajasthan, we fail to see how far it is justified on its part to oppose the application filed by a litigant under Section 5 of the Limitation Act, 1963 (for short, 'the Act, 1963') for condonation of delay made in filing of the appeal. It is understandable and this opposition of the State of Rajasthan could have been appreciated where the appeals on its behalf are filed within the prescribed period of limitation. A person who has glass house, it is not expected from him to throw stones on the house of other persons. That what preciously Sri S.C. Purohit, learned Deputy Government Advocate, is making efforts in this case for and on behalf of the State of Rajasthan. It is also a fact of which judicial notice can be taken that invariably in the State appeals which are barred by limitation as a rule the delay is condoned. Sri S.C. Purohit, Deputy Government Advocate, while opposing the application of the appellant has altogether forgotten of oblivious of the fact that the State is welfare State. State of Rajasthan is not an ordinary litigant and it is not expected from it to oppose an

application filed by a litigant under Section 5, of the Limitation Act for condonation of delay made in filing of the appeal. At the end of the State of Rajasthan a litigant cannot be non-suited on this technical ground that the appeal is barred by limitation. Yet there is another aspect in the matter which needs reference here. The condonation of delay which is there is filing of the appeal filed by a litigant is a matter in between the court and the litigants. The other side is having little concern because ultimately if the court is satisfied that the litigant has been prevented by sufficient cause from filing the appeal within the limitation, as a rule the delay is to be condoned. From the reply filed to this duplication on behalf of the State of Rajasthan we are constraint to observe about the sorry state of affairs of the State litigation. This reply is not only badly drafted but it is pleaded therein a proposition which is not accepted by the Hon'ble Supreme Court. It is not the law now as what it was earlier that the litigant has to explain each day delay. This is the old law which had now been altered by their Lordships of the Hon'ble Supreme Court in the catena of decisions.

3. Apart from that even there is no proper construction of sentence in the reply to the application. It is unfortunate that the person who drafted this reply to the application could not draw a distinction between the appeal and the application. The very opening sentence of the reply - "that the appeal for condonation of delay is vague, incomplete and devoid of facts" is defective. It is not the appeal for condonation of delay. It is an application under Section 5 of the Limitation Act. In para No. 1 of the reply it is stated that the contents of para I is not fully admitted and denied. Though the delay has been filed but there is every possibility of dismissing of the appeal. "What does the person who drafted this reply want to convey to the court, we fail to understand. In para No. 2 it is stated That the contents of para 2 is not admitted and denied." In it a proper drafting.

4. Be that as it may, the State of Rajasthan is praying for dismissal of this application under Section 5 of the Limitation Act, if the application filed under Section 5 of the Act, 1963 are dismissed it will heavily cost to the State Government. If the court goes on dismissing the applications under Section 5 of the Act, 1963 the State Government will suffer. Most of the appeals on behalf of the State Government are filed beyond the period of limitation prescribed. The object of fixing time limit under the Act, 1963 is not to deny the rights. The preliminary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situation is not because on the expiry of such time a bad cause would transform in a good cause. The rules of limitation are meant to see

that parties do not resort to their dilatory tactics to seek their remedies. Object of providing legal remedy is to reply the damage caused by the reason of legal injury. Condonation of delay is a matter of discretion of the court. Section 5 of the Act, 1963 does not say that such discretion (discretion ?) can be exercised only if the delay is within a certain limit. Length of delay is no matter acceptability of explanation is the only criteria. Sometimes the delay of shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of very long period can be condoned where the explanation thereof is satisfactory. Being the human being, in every case of delay there can be some lapses on the part of the litigant concerned, that alone is not enough to turn down the plea and to shut the door against him. If the explanation does not smack of *mala fides* or does not put forth as a part of dilatory strategy the court has to show utmost consideration to the suitor. Only in cases when there is a reasonable ground to think that the delay was occasioned by a party deliberately to gain time, the court may not accept the explanation. It is difficult to accept what for the litigant will permit the limitation for filing of the appeal should lapse. He will not wait for the expiry of the limitation prescribed for filing of the appeal. Refusal to condone the delay would result in closing the door to a litigant from putting forth his cause. There is no presumption that the delay in approaching the court is always deliberate. It is no more *res integra* that the words 'sufficient cause' under Section 5 of the Act, 1963 should receive the liberal construction so as to advance substantial justice. Litigation is not a luxury. It is not an amusement. Only under compulsion it is resorted to.

5. Having gone through the contents of the application filed by the appellant under Section 5 of the Limitation Act we are satisfied that the explanation furnished for this delay it is not put forth as a part of dilatory strategy. It is also not because where the appellant can be blamed that deliberately to gain the time this delay has been made. The conduct of the appellant does not, on the whole, warrant to castigate him as an irresponsible litigant. It is true while condoning the delay which is there in filing of the appeal, the court ordinarily should not forget the opposite party altogether. But, here the opposite party is State of Rajasthan a welfare State, seldom to file the appeal within limitation and it is not expected from it to oppose such an application of a suitor. In case the delay in filing of the appeal is condoned, the State of Rajasthan, is not likely to be adversely affected. It is a matter of claim made by the appellant for promotion with effect from the date his juniors were promoted with the consequential benefits. In case this claim of the appellant is accepted, he will get some financial benefits in present and in future. If ultimately he succeeds in establishing his claim to

the satisfaction of the court he may be given the notional benefits. Otherwise also ordinarily such claims of the employees are accepted it cannot be said that the State will adversely affect to the extent where the appeal has to be dismissed as barred by limitation. During these days when everybody is fully occupied or avocation of life an omission to adopt extra vigilance need not to be used as a ground to depict him a litigant not aware of his responsibility and to visit him with drastic consequences.

6. As a result of the aforesaid discussion we are satisfied that this delay made in filing the appeal is satisfactorily explained by the appellant. Consequently this application succeeds and delay of 197 days made in filing of the appeal is condoned. The application under Section 5 of the Limitation Act stands disposed of.

7. Having heard the learned counsel for the parties on merits we are satisfied that this appeal deserves consideration.

8. Admit. Since Sri S.C. Purohit, Deputy Government Advocate, has already put appearance for the contesting respondent, the matter is complete. The registry is directed to place the matter for hearing on 21.8.2003.

Application allowed.