

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30.04.2014
Date of Decision: 19.09.2014

+ **CRP 139/2010 & CM No.13230/2010**

DR. YOGENDER PAL & ANR. Petitioners
Through: Mr. Ravi Sikri & Mr. Deepank Yadav, Advs.

Versus

ALL INDIA BLIND RELIEF SOCIETY & ORS. Respondents
Through: Mr. Gajindu Kumar, Mr. Chandra Shekhar,
Ms. Kajal Bhati & Mr. O.P. Sisodia, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This revision petition impugns an order dated 08.09.2009 whereby the Trial Court condoned the delay of the respondent/plaintiff in bringing on record the LRs of the deceased defendant. Consequently, the Trial Court set aside the abatement of the suit and ordered the LRs of the deceased defendant to be brought on record.

Brief facts

2. The respondent had filed a suit for possession of its accommodation, for permanent injunction, damages and mesne profits against the father of the petitioners, namely Dr. Kumar Pal, who was the sole defendant in

the suit. The suit was initially filed before this Court but on account of enhancement of pecuniary jurisdiction, it was transferred to the District Court, vide order dated 1.9.2003.

3. Admittedly, the sole defendant died on 07.05.2000. The respondent/plaintiff filed an application on 20.07.2005 under Order XXII Rule 4 to bring on record, the petitioners as LR's in the suit. Thereafter, on 08.05.2006, three applications were filed. One under Order VI Rule 17 seeking amendment of the application dated 20.07.2005 so as to bring on record five more legal heirs of the deceased defendant; another under Order XXII Rule 9 (2) for setting aside abatement of the suit and the last one being an application under Section 5 of the Limitation Act, seeking condonation of delay in filing the application under Order XXII Rule 9 (2).
4. In the application for setting aside the abatement, it was submitted that after the death of the sole defendant, the suit premises were lying locked and the keys were with the petitioner, Dr. Yogendra Pal; that the petitioner had assured that he would be handing over vacant possession of the suit premises; that as no one was residing in the premises and no one had the right to occupy the premises including the legal heirs of the deceased defendant, it was under the belief that no one could claim possession; that it was given legal advice on 05.05.2006 that an appropriate application under Order XXII Rule 9 (2) was required to be filed. Lastly, it was submitted that the respondent was an NGO, in service of the blind and the needy and the suit for the possession of its property should not be allowed to be defeated by technicalities.

5. In the application for condonation of delay, it was submitted that the respondent was not aware of all the legal heirs of the deceased defendant. It was also submitted that as the respondent was under the impression that the petitioner, Dr. Yogender Pal would hand over vacant possession of the suit premises as assured by him, the application could not be filed within the period of limitation.
6. Replies to the respondent's applications were filed by the petitioners. It was submitted that the applications were liable to be dismissed since it was time barred. It was submitted that the sole defendant passed away on 07.05.2000 while the application under Order XXII Rule 4 was filed in July 2005. It was further submitted that the death of the defendant was well within the knowledge of the respondent/plaintiff since he was living and died in premises of the respondent/plaintiff itself.

Impugned order

7. The Trial Court, after hearing the parties allowed the applications under Order XXII Rule 9 (2) and Section 5, Limitation Act, thereby condoning the delay. However, the applications filed under Order XXII Rule 4 and Order VI Rule 17 were dismissed, since they stood infructuous. The reasons given by the respondent that it was unaware of all the legal heirs of the deceased defendant and the assurance made to it by the petitioner that he would hand over the keys of the suit premises, in the opinion of the Trial Court, constituted sufficient cause for condoning the delay. The Trial Court after perusing the proceedings sheets, observed that despite being duty bound, the defendant's counsel did not inform this Court (where the suit was initially instituted) of the defendant's demise. The Trial Court further noted that the counsel time and again sought

adjournments after 07.05.2000 to enable settlement between the parties but failed to inform the Court of the defendant's demise. It was also observed that it was only on 25.10.2004 when the Court notice was received back with the remark that the defendant had expired, the factum of his death came to knowledge of the Court. The Trial Court further observed that the accountant of the respondent Society was present in Court on the said date and thereafter also, on 27.01.2005 and 23.03.2005. On 23.03.2005, the respondent was given the last opportunity to bring on record the LRs of the deceased defendant and the case was put up for further orders on 20.07.2005, when the respondent filed the application under Order XXII Rule 4, CPC. The Trial Court also relied upon *Mithilal Dalsanghar Singh v. Annabai Dayaram Kini*, AIR 2003 SC 4244; *S. Kupppammal v. A G Kannusami*, (2006) 5 CTC 631 and *Sital Prasad Saxena, v. Union of India*, (1985) 1 SCC 163.

Submissions before this Court

8. The learned counsel for the petitioner has submitted that the impugned order suffers from material irregularity and should, therefore, be set aside. It is also submitted that the application of the respondents was hopelessly time barred since it was filed after an inordinate delay of more than five years. Counsel further submits that on 25.10.2004, the Trial Court had directed the respondents to take appropriate steps to bring on record the LRs but the application was filed 20.07.2005 i.e., after nine months. It is further submitted that the respondents remained grossly negligent in complying with the provisions of Order XXII Rule 4 and that there was no sufficient cause. The learned counsel has also drawn the attention of this Court to two Court orders to submit that the

respondents were well aware of the death of the defendant. He submits that one of the orders is of this Court itself in CR No. 1/1985 passed on 25.09.2003 and another is of the learned ADJ in CS 186/06/86 passed on 03.05.2006. The learned counsel for the petitioner has placed reliance on the ratio of ***Balwant Singh (Dead) v. Jagdish Singh & Ors., (2010) 8 SCC 685.***

9. In response, the learned counsel for the respondent sought to sustain the impugned order. He submitted that the impugned order is based on law and the judicial precedents which the Trial Court was bound by; there is no illegality or material irregularity warranting the interference of this Court in its revisionary jurisdiction; hence counsel prays for the dismissal of this revision petition.

Analysis

10. The petitioner has invoked the jurisdiction of this Court under Section 115, CPC. It is settled law that where the subordinate court has exercised its discretion in a matter, it ought not ordinarily be interfered with under the revisionary powers. Discretionary orders can be interfered with only when the subordinate court has acted on wrong principles or has acted with no consideration for justice. In this regard, it would be useful to refer to the decision of the Supreme Court in ***N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123***, wherein it was held:

“9. 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.

10. *The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.*

11. *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.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366 : AIR 1972 SC 749] .

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

11. Keeping in mind the aforesaid dicta of the Supreme Court, this Court is of the view that the impugned order does not suffer from any illegality or material irregularity. The learned counsel for the petitioner had relied upon two court orders to show that the respondent was aware of the death of the sole defendant in the suit. However, on a perusal of the replies filed by the petitioners, this Court finds that said orders were not

brought to the notice of the Trial Court. Therefore, this Court would not take them into consideration. Moreover, the Trial Court has noted that the counsel appearing for the deceased defendant, though duty bound did not inform the Court of his demise. The duty on the counsel has been cast by way of Order XXII Rule 10A, which was inserted by the Amendment Act of 1976.

12. In view of the above, this Court finds no reason to interfere with the impugned order in its revisionary jurisdiction. The impugned order does not suffer from material irregularity. This petition is dismissed as being without merit.

NAJMI WAZIRI, J.

SEPTEMBER 19, 2014/vmk/acm