

Neutral Citation No. - 2023:AHC:216032

Judgment Reserved on 8.11.2023

Delivered on 9.11.2023.

Court No. - 48

Case :- WRIT - B No. - 3762 of 2023

Petitioner :- Bharat Lal And 3 Others

Respondent :- State Of U.P. And 9 Others

Counsel for Petitioner :- Pradeep Singh Sengar, Rituvendra Singh Nagvanshi, Sr. Advocate

Counsel for Respondent :- C.S.C, Pramod Kumar Pandey, Raj Kumar Pandey, Ram Kumar Pal

Hon'ble Saurabh Shyam Shamschery, J.

1. Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Pradeep Singh Sengar, learned counsel for petitioners and Sri Ram Kumar Pal, learned counsel for respondent No.4

2. Facts of the present case in brief are as follows:

(i) The Consolidation Officer vide order dated 24.8.1984 decided a case arising out of proceedings under Section 12 of Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred as "Act of 1953") on basis of an alleged compromise entered into between parties.

(ii) At a very belated stage, contesting respondents filed an appeal against above referred order dated 24.8.1984, along with an application for condonation of delay.

(iii) The Settlement Officer of Consolidation vide order dated 9.12.2022 has condoned delay of about three and half decades in filing the appeal.

3. Above referred order was challenged by petitioners by way of filing a revision petition however it was dismissed vide order dated 16.2.2023.

4. In the aforesaid circumstances, petitioners preferred a Writ Petition No.1126 of 2023 which was allowed in part vide order dated 26.4.2023, whereby impugned orders therein were set-aside and matter was remitted to the Settlement Officer of Consolidation to decide the application for condonation of delay in filing appeal afresh. Relevant part of the order is mentioned hereinafter:

" 8. There is no dispute about the fact that the order under Section 12 of Act of 1953 has been passed by the Assistant Consolidation Officer on the basis of compromise on 24.8.1984. There is also no dispute about the fact that appeal under Section 11 (1) of Act of 1953 has been filed by respondent no.4 after 36 years on 17.3.2020 along with the application under Section 5 of Limitation Act which has been allowed by the impugned order and date has been fixed for disposal of appeal on merit. There is also no dispute about the fact that revision filed by the petitioners has been dismissed.

9. Since, the order has been passed by the Assistant Consolidation Officer on 24.8.1984 on the basis of compromise entered into between the parties and respondent no.4 became major in the year 1988-19 according to the pleadings setup by him but the appeal has been filed by respondent no.4 on 17.3.2020, there is no proper explanation in the application under Section 5 of Limitation Act for condonation of delay of 36 years and the appellate Court vide order dated 9.12.2022 has condoned the delay only by saying that the order is without jurisdiction, hence order requires consideration. The operative portion of the appellate order runs as follows:

"मैंने उभयपक्ष के विद्वान अधिवक्ता के तर्कों को सुना एवं पत्रावली का अवलोकन किया, जिससे स्पष्ट हुआ कि सहायक चकबन्दी अधिकारी के आदेश दिनांक 24.08.1984 के विरुद्ध यह अपील लगभग 36 वर्ष विलम्ब से प्रस्तुत की गयी है।

यद्यपि की यह अपील अत्यधिक कालबाधित प्रस्तुत की गयी है। मा० उच्च न्यायालय व उच्चतम न्यायालय की गयी व्यवस्था के अनुसार यदि कोई आदेश क्षेत्राधिकार के बाहर का है तो उसे निरस्त करने में विलम्ब बाधा नहीं होती है। इस प्रकार उक्त प्रकरण में उदार व नम्र दृष्टिकोण अपनाते हुए मियाद अधिनियम की धारा 5 का लाभ देना उचित प्रतीत होता है। जहां तक आपत्तिकर्ता का यह कथन कि उसने रेस्टोरेशन के विरुद्ध निगरानी योजित किया है तो इस सम्बन्ध में कोई स्थगन आदेश नहीं प्रस्तुत किया गया है।

आदेश

उपरोक्त विवेचना के आधार पर अपील में मियाद का लाभ देते हुए विलम्ब मर्षित किया जाता है। पत्रावली वास्ते गुण-दोष पर बहस हेतु दिनांक 21.12.2022 को को पेश हो।

दिनांक:-

(धन राज यादव)
बन्दोबस्त अधिकारी चकबन्दी,
गाजीपुर।"

10. There is no proper consideration by the appellate Court for condoning the delay of 36 years. The law is settled that there can be liberal view with respect to the sufficiency of cause but in respect to the reality of cause, there can be no liberal view, as such, respondent no.4 has to give proper explanation of 36 years as the right has been created in favour of person in whose favour the order was passed and subsequently the property has been sold out to other persons.

11. The case law of Hon'ble Apex Court as cited by learned counsel for the petitioner in Balwant Singh (supra) is relevant for the instant matter, paragraph no.13 of the judgment is as under:-

"13. As held by this Court in the case of Mithailal Dalsangar Singh (AIR 2003 SC 4244: 2003 AIR SCW 4878) (supra) the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of ?

reasonableness? as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party. In the case of State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94 : 2000 SCC (L&S) 845] this Court had taken a liberal approach for condoning the delay in cases of the Government to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications. In the case

of Ramlal v. Rewa Coalfields Ltd. [AIR 1962 SC 361] this Court took the view:

"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan ILR (1890) 13 Mad 269.

It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration;.....

11. Considering the entire facts and circumstances as well as ratio laid down by Hon'able Apex Court the appellate order dated 9.12.2022 and the revisional order dated 16.2.2023 are liable to be set aside and the same are hereby set aside.

12. The writ petition is allowed in part and matter is remitted back before the Settlement Officer of Consolidation i.e. respondent no.3 to decide the delay condonation matter afresh in accordance with law after affording opportunity of hearing to the parties expeditiously preferably within period of three months from the date of production of certified copy of this order before him."

(Emphasis Supplied)

5. In the aforesaid circumstances, Appellate Authority has decided application for condonation of delay afresh and vide order dated 16.8.2023 again condoned delay of three and half decades and directed the appeal to be heard on merits.

6. Aforesaid order was challenged by the petitioners by way of filing a Revision Petition No.0310 of 20234 before the Deputy Director of Consolidation.

7. During pendency of above referred revision petition, Appellate Authority proceeded with the appeal and vide order dated 10.10.2023 has allowed it and set-aside order passed by Consolidation Officer and matter was remitted to it, to decide afresh.

8. A categorical statement at bar as well as an averment is mentioned in writ petition that order dated 10.10.2023 passed by the Appellate Authority on merit, has also been challenged by way of filing a revision petition, before the Revisional Authority, however details thereof are not mentioned.

9. The Appellate Authority taking note that since appeal was meanwhile decided on merit, therefore, dismissed the Revision Petition so filed against order to condone the delay by order dated 16.10.2023, which is impugned in present writ petition.

10. Learned Senior Counsel appearing on behalf of petitioners has raised following arguments:

(i) The Settlement Officer of Consolidation has not followed directions and observations passed by this Court, while remitting the appeal to decide it afresh on issue of condonation of delay and without any sufficient and truthful cause, the Appellate Authority has erroneously condoned huge delay of three and half decades. He has placed reliance on a judgment passed by Supreme Court in ***Balwant Singh (Dead) Vs. Jagdish Singh & Ors, AIR 2010 SC 3043*** as well as passed by a co-ordinate Bench of this Court in ***B.Madhuri Goud Vs. B.Damodar Reddy, 2012 (12) SCC 693.***

(ii) Learned Senior Counsel further submitted that issue of condonation of extraordinary delay in filing an appeal was required to be decided by Revisional Authority on its own and has committed a legal error in not deciding the revision petition on merit only on a ground that appeal was meanwhile decided on merit.

(iii) Learned Senior Counsel has referred certain paragraphs of impugned order as well as other documents on records such as memo of appeal, that it was well in the knowledge of contesting respondents that an order was passed by Consolidation Officer in the year 1984 and there was no ground to condone the extraordinary delay of 35 years as well as that the alleged compromise has not been seriously disputed.

(iv) Learned Senior Counsel submitted that since the petitioners have filed a substantive revision petition against an order passed by Appellate Authority whereby the appeal was

allowed on merit, therefore, the Revisional Authority ought to have heard both the revision petitions together.

11. Above submissions are opposed by learned counsel for the respondent no.4 on following grounds:

(i) This Court has directed to consider the application for condonation of delay afresh and on basis of material available the Appellate Authority has passed a reasoned order, which does not warrant any interference.

(ii) It is well settled position of law that an application for condonation of delay be considered in a non-pedantic manner.

(iii) The case was pursued by respondent's father and they were minor, when the order was passed by Consolidation Officer in the year 1984, and even thereafter they remained in possession of disputed land and as soon as petitioners tried to dispossess them, they filed a belated appeal and grounds to condone delay were effectively mentioned in the application.

(iv) Learned counsel has further submitted that as referred above, since the appeal has been decided on merits and the matter has been remitted to the Consolidation Officer, where both the parties will be heard on merit, therefore, no prejudice is caused to the petitioners.

12. Heard learned counsel for the parties and perused the records.

13. In the aforesaid factual and legal background, following facts are not much disputed that an order passed in the year 1984 by the Consolidation Officer was challenged at behest of contesting respondent, after about three and half decades.

14. In first round of litigation, matter reached up to this Court and vide order dated 26.4.2023, it was remitted to Appellate Authority to decide the application for condonation of delay afresh.

15. The Appellate Authority has considered rival submissions and condoned extraordinary delay.

16. A Revision against above referred order was filed, however, during pendency of it, the appeal was decided on merit and matter was remitted to the Consolidation Officer. A revision thereof was filed, though details are not mentioned in writ petition.

17. In the aforesaid circumstances, issue which arises before this Court for consideration is as to whether the Revisional Authority ought to have decided the challenge to an order on an application for condonation of delay, without considering that meanwhile appeal was decided on merit; secondly, as to whether extraordinary delay of 35 years was rightly condoned by the Appellate Authority or not; and thirdly, as to whether the Revisional Authority ought to have decided both revision petitions i.e. one filed against the order on application to condone the delay as well as other filed against a substantive order passed in the appeal.

18. Law in regard to 'condonation of delay' has also been reiterated by Supreme Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors, (2013) 12 SCC 649*, wherein it has been specifically held that in case of extraordinary delay, approach of the Court concerned instead of lenient should be strict. For reference paragraph No.21 of *Esha Bhattacharjee* (supra) is reproduced hereinafter:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude."*

(Emphasis Supplied)

19. There is not much dispute that delay of more than three and half decades is an extraordinary delay, therefore, a strict approach has to be adopted while considering an application for condonation of delay.

20. As referred above, Appellate Authority has condoned extraordinary delay, which was challenged by the petitioners by way of filing a revision petition and that has to be decided on its own merit since its outcome would have bearing on any further proceedings.

21. No doubt that during pendency of revision petition, the appeal was decided finally, but if the Revisional Authority comes to a conclusion that extraordinary delay of 35 years was wrongly condoned, then any further proceedings in appeal would become nullity, therefore, I am of the considered opinion that Revisional Authority has committed an error by not deciding the revision petition filed against the order passed on an application for condonation of delay on merit.

22. In aforesaid circumstances, since petitioners have filed a revision petition against the substantive order passed by the Appellate Authority also though details thereof are not on record,

therefore, it would be appropriate and in the interest of justice too that both revision petitions be decided simultaneously or one after another i.e. to decide revision petition filed against application for condonation of delay at first instance.

23. I have carefully perused the impugned order passed by the Revisional Authority and since it has not been decided on merit, therefore, to make a comment as to whether delay was rightly condoned or not by the Appellate Authority would be adverse to interest of either of parties at this stage.

24. In the aforesaid circumstances, impugned order dated 16.10.2023 passed by Deputy Director of Consolidation is set-aside and matter is remitted to the Revisional Authority to decide both the revision petitions filed by the petitioners simultaneously and it would be appropriate to decide the revision petitions filed at earlier point of time at first instance and its legal consequence would follow.

25. With the aforesaid direction, this writ petition is disposed of.

Order Date :-9.11.2023

SB