

Court No. - 48

Case :- WRIT - B No. - 3855 of 2023

Petitioner :- Vinod Kumar And 5 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Dharmendra Kumar Tripathi, Shashank Tripathi

Counsel for Respondent :- CSC, Bhupendra Kumar Tripathi, Shailendra Kumar Pandey

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Satendra Pandey, Advocate, holding brief of Sri Dharmendra Kumar Tripathi, learned counsel for petitioners, Sri Shailendra Kumar Pandey, learned counsel for respondent No.8 and learned Standing Counsel for State.

2. This is a case arising out of a belated proceeding initiated under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'Act of 1953') by predecessors in the interest of petitioners along with application filed under Section 5 of Indian Limitation Act.

3. On above referred proceedings, report was called from concerned Officer, however, the Consolidation Officer by an order dated 30.08.1996 rejected the application for condonation of delay on ground that notification under Section 9 of Act of 1953 was issued on 29.05.1975 and under Section 20 of Act of 1953 was issued on 19.05.1979, therefore, the delay of 9 to 10 years was considered to be extraordinary.

4. The aforesaid order was challenged at the instances of petitioners before the Deputy Director of Consolidation, however, by impugned order dated 04.10.2023, on same ground the revision petition was rejected.

5. Learned counsel for petitioners submits that reasons to condone the delay of 9 to 10 years was substantially mentioned in application, however, against the spirit of judgment passed by Supreme Court that issue of delay may be considered in a non-pedantic manner, both authorities had acted against well settled position of law.

6. Per contra, learned counsel for contesting respondents submits that since the petitioners were failed to submit substantial reasons to condone the delay, therefore, no relief could be granted by this Court.

7. In the aforesaid factual aspect of case before considering whether it is a case where delay of 9 to 10 years could be condoned, it would be relevant to refer paragraph No. 21 of judgment passed by Supreme Court in case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, (2013) 12 SCC 649**. The relevant paragraph 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."*

8. *Predecessors of petitioners while filing an objection under*

Section 9-A(2) of Act of 1953 had filed an application for condonation of delay that:-

"सविनय निवेदन है कि हम सायल को तरफसानियान के हक में इन्द्राज वर्ग 4 इल्म पहले कभी नहीं था और न हमको कभी इसकी जानकारी करने की जरूरत पैदा हुई। अरसा 3-4 दिन हुआ तरफसानियान ने धमकी दिया कि आराजियात मजकूर से हम सायल अपनी तमामी आबादी के असियाय हटा ले वह उनके नाम दर्ज है तब हमने कागजात की देखभाल किया तो सब फरजी इन्द्राज की जानकारी हुई। अतएव अविलम्ब आपत्ति हाजा दाखिल की जा रही है। जान बूझकर देरी नहीं की गई है इसलिए प्रार्थी दफा 5 कानून मियाद का फायदा पाने का मुश्तहक है।

अतः श्रीमान जी से प्रार्थना है कि प्रार्थी को दफा 5 कानून मियाद का फायदा देकर देरी माफ की जाये।"

9. It is not under dispute that petitioners as well as respondents are villagers and dealing with them technically on issue of condonation of delay would be against interest of justice and as held in **Esha Bhattacharjee(supra)** that in such matters there should be liberal approach except when the delay is extraordinary and I am of considered view that in the facts and circumstances of case, 9 to 10 years could not be considered to be an extraordinary delay, therefore, there is no requirement to adopt strict approach and taking a liberal approach and delay could be condoned, accordingly, delay is condoned and impugned orders are set aside and matter is remitted back to the Consolidation Officer to decide the case on merit, expeditiously, preferably within a period of six months from today.

10. This writ petition is accordingly, **disposed of.**

Order Date :- 21.11.2023/P. Pandey