

Court No. - 48

Case :- WRIT - B No. - 4126 of 2023

Petitioner :- Surendra Kumar Mishra

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Abhishek Tandon,Manu Srivastava

Counsel for Respondent :- C.S.C.,Neeraj Srivastava,Ramashray Tripathi

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Abhishek Tandon and Sri Manu Srivastava, Advocates for petitioner and Sri H.N. Singh, learned Senior Advocate assisted by Sri Ram Ashre Tripathi and Sri Neeraj Srivastava, Advocates for contesting-respondents.

2. Petitioner is aggrieved that delay in filing a belated appeal of about four and half years was not condoned, despite a well settled position of law that in such cases a liberal approach ought to have been adopted. Petitioner's revision filed against appellate order was also dismissed.

3. Learned counsel for petitioner submits that petitioner has no knowledge about the order dated 16.08.2007 passed by Consolidation Officer and when there was a rumour in village, he came to know about the order and has filed an appeal. Learned counsel further submits that Appellate Authority has adversely taken the period between procurement of certified copy of order dated 16.08.2007 and filing of an appeal, which is about nine months.

4. Learned Senior Advocate appearing for contesting-respondents submits that the explanation is not bona fide since petitioner himself has appeared in proceedings before Consolidation Officer, therefore, he has knowledge of proceedings as well as of order passed by the Consolidation Officer. He, however, has not disputed that while considering delay, normally a liberal approach should be adopted.

5. It appears that application filed for condonation of delay before Appellate Authority is not happily worded. It could not be disputed that petitioner has participated in the proceedings before Consolidation Officer. However, it appears that Appellate Authority that has given much importance to the period between procurement of certified copy of order and filing of the appeal, which is

about nine months. It is relevant to quote from a judgment passed by Apex Court in **Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649** wherein it is reiterated that:

"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."

6. In the present case, delay in filing appeal was about four years and four months and delay between getting a certified copy of impugned order and filing the appeal was about nine months. The Appellate Authority has held that petitioner has not explained delay of nine months, which was not a correct approach. The Appellate Authority instead of adopting a liberal approach, has adopted a strict approach, which in given facts is not a correct approach, as well as since the appeal was out of consolidation proceedings, therefore, delay of four years would not be extraordinary delay.

7. In aforesaid circumstances, I find that petitioner has made out a case for condonation of delay in filing appeal. Therefore, impugned orders dated 20.12.2018 passed by Settlement Officer of Consolidation, Mainpuri and 01.06.2023 and 04.09.2023 passed by Deputy Director of Consolidation, Mainpuri, are hereby set aside. The Appellate Authority is directed to decide

appeal on merit expeditiously. However, petitioner has to pay a cost of Rs. 10,000/- to contesting-respondents within a period of three weeks from today.

8. With aforesaid observation/ directions, this writ petition is disposed of.

Order Date :- 15.12.2023

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