

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Judgment Reserved on: 06.10.2023

Judgment Pronounced on: 03.11.2023

Court No. - 3

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE No. -
187 of 2023

Applicant :- Dinesh Kumar Maurya And Another

Opposite Party :- The Chancellor, Lucknow University Lko. And
Others

Counsel for Applicant :- Yadukul Shiromani Srivastava (Y.S.Lohit)

Hon'ble Vivek Chaudhary J.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Y. S. Lohit, the learned counsel for the applicants and perused the records.
2. The instant application has been filed seeking condonation of delay in filing an application for review of the judgement and order dated 07.02.2023 passed by a coordinate bench of this Court dismissing Writ A No. 4433 of 2010 filed by the petitioners. The office has reported a delay of 174 days in filing the review application.
3. In the affidavit filed in support of the application for condonation of delay, it has been stated that while preparing arguments to be advanced in SLP (C) No. 00633/2023, the learned counsel for the petitioners came across the judgment in the case of Vice Chancellor, Lucknow University, Lucknow versus Akhilesh Kumar Khare and others, AIR 2015 SC 3473 rendered in the matter of daily wage employee of Lucknow University. Therefore, their Counsel withdrew the S.L.P. and it was dismissed as such on 10.04.2023. Much after 10.04.2023, they came to know that a person who was employed on daily wages and whose services were terminated in the year 2008, and

whose writ petition and special appeal had been dismissed by this Court, had been paid back wages by means of an order dated 25.02.2016 passed by the Deputy Registrar (Administration), with the approval of the Vice Chancellor. They also came to know that by means of the judgement and order dated 24.07.2019 passed in Writ Petition No. 6680 (S/S) of 2007 filed by Srimati Anima Shukla, who was working on a non-approved post in self financed scheme in Lucknow University, this Court had ordered payment of dues of the petitioner.

4. It has been stated in the affidavit that there is sufficient cause to review the judgement dated 07.02.2023 but the petitioner no. 1, who is doing Pairvi was ill and, therefore, the petition could not be filed earlier.
5. A copy of pathological examination report dated 08.02.2023 of Dinesh Maurya and a copy of a prescription dated 17.03.2023 issued on a plain paper for treatment of Dinesh Kumar advising medication for seven days, have been annexed with the affidavit filed in support of the application. Apparently, even after the pathological examination report dated 08.02.2023, the petitioner no.1 went to consult a doctor only on 17.03.2023 and the doctor advised medication for seven days only, which ended on 24.03.2023. There is nothing on record to indicate continuance of any ailment after 24.03.2023 till filing of the petition on 02.09.2023. Moreover, no circumstance has been pleaded which would give rise to a sufficient cause for the petitioner no. 2 having not approached this Court for filing the review application within the prescribed period of limitation. Thus there is absolutely no explanation for the delay.
6. In **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors.** (2013) 12 SCC 649, the Hon'ble Supreme Court discussed the law regarding condonation of delay as explained in various precedents and summarized the same as follows: -

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

- (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.*
- (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.*
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (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.*
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- (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.*
- (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for 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.*
- (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.*
- (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.***
- (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.*
- (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion*

which is founded on objective reasoning and not on individual perception.

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

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

- (a) ***An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.***
- (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- (d) ***The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”***

(Emphasis supplied)

7. In **Ajay Dabra versus Pyare Ram and others** 2023 SCC OnLine SC 92, the Hon’ble Supreme Court held that: -

“5. What we have here is a pure civil matter. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay.”

(Emphasis supplied)

8. In **Sheo Raj Singh (Deceased) Through Lrs. and Others Versus Union of India and Another**, 2023 SCC OnLine SC 1278, after discussing the various precedents on the issue, the Hon’ble Supreme

Court summarized the principles regarding condonation of delay in the following words: -

*“29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, **we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation**, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, **the courts must distinguish between an ‘explanation’ and an ‘excuse’**. An ‘explanation’ is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an ‘explanation’ from an ‘excuse’. Although people tend to see ‘explanation’ and ‘excuse’ as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An ‘excuse’ is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an ‘excuse’ would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.*

(Emphasis supplied)

9. The judgment sought to be reviewed was delivered on 07.02.2023. The petitioners did not apply for grant of its certified copy. They

applied for obtaining an authenticated computerised copy of the judgment on 10.02.2023 and the copy was prepared on the same day, but it was received on 13.02.2023. Even if the period between 10.02.2023 to 13.02.2023 is excluded, the limitation for filing the review application expired on 13.03.2023.

10. The petitioners had filed SLP (C) No. 00633/2023 against the judgment and order dated 07.02.2023 which is sought to be reviewed. The petitioners claim that while preparing the submissions to be advanced before the Hon'ble Supreme Court, their learned counsel came across the judgment dated 08.09.2015 reported in AIR 2015 SC 3473, which he had failed to notice earlier. Thereafter, the Counsel withdrew the SLP without seeking any liberty and it was dismissed as such on 10.04.2023. The review application has been filed on 02.09.2023, i.e. 145 days after dismissal of the S.L.P. as withdrawn.
11. Review application can only be filed on the ground that the Court had committed an error, which is apparent on the face of the record and an error committed by the Counsel by failing to notice a relevant case-law and failing to place the same before the Court cannot be a ground for review of the judgment, as the provision for review a judgment is not meant to provide a re-hearing to the parties.
12. The petitioner no.1 had gone to consult a doctor on 17.03.2023 and the doctor had advised medication for seven days only. It is not the case of the petitioner no. 1 that he remained ill till filing of the review application on 02.09.2023. There is absolutely no averment as to why the petitioner no. 2 did not come forward to file the review application. The petitioner no. 2 had not even joined in filing of the review application and he had not signed any document, including the Vakalatnama executed in favour of the learned Counsel and he has signed the Vakalatnama only after the officials of the Registry of this Court had raised an objection to this effect.
13. From the aforesaid facts, it appears that the averment regarding the petitioner no. 1 having consulted a doctor on 17.03.2023 has been

made as an excuse for the delayed filing of the review application, and it does not offer an explanation making out a sufficient cause for the delay.

14. Sri. Y. S. Lohit, the learned Counsel for the petitioners has relied upon the judgments in the cases of **Kunhayammed v. State of Kerala**, (2000) 6 SCC 359 : AIR 2000 SC 2587, **S. Bagirathi Ammal v. Palani Roman Catholic Mission**, (2009) 10 SCC 464 : AIR 2008 SC 719 and **Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.**, (2019) 4 SCC 376 : AIR ONLINE 2019 SC 2218
15. In **Kunhayammed v. State of Kerala** (Supra), it was held that: -

“38. The review can be filed even after SLP is dismissed is clear from the language of Order 47 Rule 1(a). Thus the words “no appeal” has been preferred in Order 47 Rule 1(a) would also mean a situation where special leave is not granted. Till then there is no appeal in the eye of law before the superior court. Therefore, the review can be preferred in the High Court before special leave is granted, but not after it is granted....”
16. The ratio of **Kunhayammed** (Supra) was followed in **Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.**, (Supra). There can be no dispute against the aforesaid proposition of law, but it is not applicable at the time of deciding the application under Section 5 of the Limitation Act.
17. In **S. Bagirathi Ammal v. Palani Roman Catholic Mission** (Supra), the Hon’ble Supreme Court held that: -

*“11..., it is useful to refer the provisions under Order 47 Rule 1 CPC relating to review which read as under:
“1. Application for review of judgment.—(1) Any person considering himself aggrieved—
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not*

within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

*A reading of the above provision makes it clear that review is permissible (a) **from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed;** (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the court which passed the decree or order. The provision also makes it clear that an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.*

12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be

decided just by a perusal of the records and if it is manifest can be set right by reviewing the order ”

18. The petitioners have belatedly approached this Court seeking review of its judgment on the ground that at the time of advancing submissions in the Writ Petition on 07.02.2023, their learned Counsel had failed to notice and place a judgment dated 08.09.2015 reported in AIR 2015 SC 3473. Failure of the learned Counsel for the petitioners to notice a judgment while preparing his submissions and the judgment being noticed by him subsequently during preparation of submissions to be advanced in S.L.P., would not be akin to discovery of a new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed, as mentioned in Order XLVII Rule 1 C.P.C. Under the guise of review on this ground, the petitioners cannot claim a re-hearing of the matter. In any case, the aforesaid judgment does not support the petitioners' claim of condonation of delay in filing the review application.
19. The delay in filing the review application cannot be condoned without the petitioners having given an explanation showing a sufficient cause for the delay. Therefore, the application seeking condonation of delay in filing the review application cannot be allowed and the same is liable to be rejected.
20. Accordingly, the application seeking condonation of delay in filing the review application is **rejected**.
21. Let the review application be consigned to records.

(Subhash Vidyarthi, J.) (Vivek Chaudhary, J.)

Order Date - 03.11.2023

Pradeep/-