

HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No.220 of 2023

Narendra Kumar Jain

--Appellant

Versus

State of Uttarakhand and Another

--Respondents

Presence:-

- 1. Mr. M.C. Kandpal, learned Senior Advocate assisted by Mr. Chitrarth Kandpal, learned counsel for the appellant.*
- 2. Mr. A.P. Singh, learned Addl. A.G. for the State.*

Coram: Hon'ble Manoj Kumar Tiwari, ACJ
Hon'ble Pankaj Purohit, J.

This intra-court appeal is preferred challenging the final order dated 17.05.2023 passed by a learned Single Judge of this Court in Restoration and delay condonation applications filed in WPSS No.1157 of 2011 (Narendra Kr. Jain v. State and another). By the said order, appellants' application seeking condonation of delay as well as restoration application was rejected.

2. Heard learned Counsel for the parties and perused the record.

3. Perusal of the record reveals that the writ petition filed by the writ petitioner was dismissed for non-prosecution on 17.03.2017. Appellant moved an application seeking restoration of writ petition, along with application for condonation of delay, on 24.04.2023. The explanation offered for delay in moving restoration application was that he had filed another writ petition being WPSS No.436 of 2012 against termination of his services, which was allowed on 19.08.2013; the appeal filed against the said judgment by the employer being SPA No.395 of 2013 was also dismissed on 06.12.2016;



appellant remained busy pursuing the said litigation and he was not aware about dismissal of WPSS No.1157 of 2011; and the restoration application was filed only when he learnt about dismissal of said writ petition due to non-prosecution.

4. Learned counsel for the appellant submits that a liberal & justice oriented approach has to be adopted while considering prayer for delay condonation, in order to ensure that substantive right of a litigant is not defeated on account of some delay in moving restoration application. He submits that the respondent to the writ petition has not filed any objection to the delay condonation application and restoration application, therefore, the delay ought to have been condoned. He relies upon the judgment rendered by Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, reported in (1998) 7 SCC 123. Paragraph nos.11, 12 & 13 of the said judgment are extracted below:

“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 ut 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.”

5. Learned counsel for the appellant also relied upon judgment rendered by Hon'ble Supreme Court in the case of *Sangram Singh Vs. Election Tribunal, Kotah & another*, reported in AIR 1955 SC 425, in contending that laws of procedure are based on the principle that, as far as possible, no proceeding in a Court of law should be conducted to the detriment of a person in his absence. Learned counsel for the appellant submitted that the writ petition got dismissed due to default on the part of his counsel in appearing before the Court, when the case was called out. He submits that a litigant should not be made to suffer for a lapse on the part of his counsel. He submits that rejection of delay condonation application has resulted in dismissal of restoration application and, as a consequence thereof, petitioner would lose the benefit of determination of his right, which he claimed in the writ petition.

6. In view of the facts & circumstances of the case, we are of the considered opinion that the prayer for delay condonation made by the appellant before the Writ

Court deserved to be allowed by taking a liberal & justice oriented approach to ensure that the writ petition is heard and decided on merits.

7. We, therefore, allow this intra-court appeal and set aside the impugned order dated 17.05.2023 passed by learned Single Judge of this Court and allow the delay condonation as well as restoration application moved by the appellant in the writ petition and restore the writ petition to its original number.

8. Pending application, if any, stands disposed of.

(Pankaj Purohit, J.) (Manoj Kumar Tiwari, ACJ.)
23.12.2024

Rdang