

Court No. - 27

Case :- CRIMINAL REVISION DEFECTIVE No. - 84 of 2024

Revisionist :- Mithlesh Kumar Mishra @ Mithlesh

Opposite Party :- State Of U.P. Thru. Secy. Home Deptt. Lko. And Another

Counsel for Revisionist :- Neeraj Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

(Application No.2 of 2024)

1. Heard Sri Neeraj Srivastava, the learned counsel appearing for the applicant and Sri Manish Kumar Pandey, the learned Additional Government Advocate and perused the record.

2. This is an application seeking condonation of delay of 588 days in filing the revision under Section 19(4) of the Family Court Act against the judgment and order dated 21.04.2022 passed by the Additional Principal Judge-I, Family Court, Lucknow has directed the revisionist to pay Rs1000/- per month to opposite party No.2 from the date of the application and Rs.4,000/- per month from the date of an order dated 21.04.2022.

3. The aforesaid order is not an ex parte order and it was passed after the revisionist had filed his objections against the application and had got himself examined as D.W.-1 and after submissions were advanced by the learned counsel for the revisionist.

4. In the affidavit filed in support of the application under Section 5 of the Limitation Act, the revisionist has stated that he after obtaining certified copy of the impugned judgment and order, met his learned counsel on 10.06.2023. However, the application for obtaining certified copy of the impugned order was filed on 18.10.2023, which was prepared on 19.12.2023 and was received on the same day. Therefore, the averment made in the affidavit filed in support of the application that after obtaining certified copy of the impugned judgement and order, the revisionist had met his counsel on

10.08.2024 appears to be false on the face of record. There is absolutely no explanation about the period spent from the date of the impugned order i.e. 21.04.2022 and the date of filing of application obtaining the certified copy on 18.12.2023. Further, there is no explanation of the delay after obtaining certified copy of the order on 19.12.2023, till it was prepared on 28.02.2024.

5. 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."

6. 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."

7. 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."

8. As the revisionist has to give any proper explanation for the delay of 588 days in filing the revision, there is no ground to condone the delay in filing the revision. Accordingly, the application for condonation of delay is dismissed without issuing notice to opposite party No.2.

9. Let the revision be consigned to record.

Order Date :- 13.3.2024

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