

Court No. - 7

Case :- WRIT - B No. - 294 of 2024

Petitioner :- Vishwanath

Respondent :- State Of U.P. Thru. Collector, Lucknow And Others

Counsel for Petitioner :- Prem Shanker Pandey, Sandeep Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the petitioner and Sri Hemant Kumar Pandey, learned counsel for the State.

2. By means of the present petition, petitioner has assailed the order dated 08.02.2024 passed by the respondent No.2-Board of Revenue, U.P., Lucknow in Revision No. REV/2218/2022/Lucknow, whereby the the respondent No. 2 condoned the delay in instituting the revision under Section 333 of the U.P.Z.A. & L.R.Act, 1950 (in short "Act of 1950") challenging the order dated 06.09.2018 passed in Case No. 408/2004-05 by the Additional Commissioner, Judicial-II, Lucknow Division, Lucknow.

3. Before proceeding further, this Court finds it appropriate to refer the law related to condonation of delay.

4. This Court as also Hon'ble Apex Court in various judgments have held that while dealing with the applications for condonation of delay so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned. The Courts concerned while dealing with such applications should also consider the fact that whether the delay has sufficiently been explained or not. The manner of exercising discretion in matters relating to condonation of delay is fairly well settled and it has been consistently held that while exercising discretion in such matters, the words "sufficient cause" under Section 5 of The Limitation Act, 1963, should be construed in a liberal manner and in the absence of anything showing malafide or deliberate delay as dilatory tactics, the Court should normally condone the delay.

5. It is also settled principle of law that while dealing with the of condonation of delay the discretion if exercised judiciously and not arbitrarily after taking note of the facts and the explanation given in the application seeking condonation of delay as also the objection, by the Courts/Authority concerned, then, the Appellate Court/Higher Authority should not interfere in that discretion.

6. The Hon'ble Apex Court in the case of **Ramji Dass and others v. Mohan Singh, 1978 ARC 496** has held that as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. In that case the appeal was filed against an ex-parte decree after eight years and the District Court as well as the High Court had rejected the matter on the ground of delay. However, setting aside the order of the High Court, Hon'ble Apex Court observed as under:

"... we are inclined to the view that, as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. Therefore, we think that the order of the High Court should not have been passed in the interest of Justice which always informs the power under S. 115 C.P.C. ..."

7. The manner of exercising discretion by Courts in matters relating to condonation of delay was subject matter of consideration in the case of **N. Balakrishnan Vs. M. Krishnamurthy; (1998) 7 SCC 123**, wherein Hon'ble Apex Court observed as under:-

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

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 up 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 and State of W.B. v. Administrator, Howrah Municipality, (1972) 1 SCC 366 ."

8. In the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nefar Academy and others*** reported in (2013) 12 SCC 649, the issue before the Apex Court was that whether the High Court rightly condoned the delay of 2449 days in challenging the interim order dated 25.02.2004, which was duly communicated to the authorities and even for compliance of the same, the District Inspector of Schools, Howrah on 24.01.2006, directed the school authorities to comply with the directions issued vide order dated 25.02.2004. The Apex Court after considering the earlier judgments allowed the appeal and set aside the order of the High Court, condoning the delay. In the case of ***Esha Bhattacharjee (supra)***, the Apex Court in para 21 of the judgment culled out the principles on the issue of condoning the delay, which are as under:-

"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."

9. In the case of ***Brijesh Kumar and others vs. State of Haryana and others*** reported in **(2014) 11 SCC 351**, the Hon'ble Apex Court observed as under:-

"6. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained everyday by the courts. The law of limitation is enshrined in the legal 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, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. The Privy Council in General Accident Fire and Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim [(1939-40) 67 IA 416 : (1941) 53 LW 212 : AIR 1941 PC 6] , relied upon the writings of Mr Mitra in Tagore Law Lectures, 1932 wherein it has been said that:

A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.

8. In P.K. Ramachandran v. State of Kerala [(1997) 7 SCC 556 : AIR 1998 SC 2276] , the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:

"6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds."

9. While considering a similar issue, this Court in Esha Bhattacharjee v. Raghunathpur Nafar Academy [(2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450] laid down various principles inter alia: (SCC pp. 658-59, paras 21-22)

"21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

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.

21.9. (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.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."

10. The Hon'ble Apex Court in the case of **Bhivchandra Shankar More v. Balu Gangaram More** reported in **(2019) 6 SCC 387**, which reads as under:-

"15. It is a fairly well-settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in B. Madhuri [B. Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693 : (2013) 2 SCC (Civ) 546] , this Court held as under:

"6. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay."

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N. Balakrishnan v. M. Krishnamurthy [N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123], this Court held as under:-

"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....."

11. The Hon'ble Apex Court in the case of **Ajay Dabra vs. Pyare Lal and others** reported in **2023 SCC OnLine SC 92**, relevant paragraphs of which read as under:-

"12. This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela v. Financial Commissioner, Revenue, Punjab, Chandigarh (1977)4 SCC 69 has held:

"21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned."

13. This Court in the case of Basawaraj v. Special Land Acquisition Officer (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarized to the effect

that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

12. It would be apt to observe that the expression "date of that order" was considered by the Hon'ble Apex Court in the judgment passed in the case of **D. Saibaba v. Bar Council of India** reported in **(2003) 6 SCC 186**, wherein, the Hon'ble Apex Court after considering the earlier judgments related to similar expressions has held that "date of that order" means "date of knowledge of the order".

13. Considered the aforesaid and perused the record including the impugned order.

14. Upon due consideration of aforesaid, this Court finds that the revisional authority i.e. respondent No.2-Baord of Revenue, U.P., Lucknow, has rightly condoned the delay. It is for the following reasons:-

(i) A Public Interest Litigation No. 296 of 2022 (Pramod Kumar And 4 Others vs. State of U.P. And 10 Others) was filed in relation to certain piece of land alleged to be covered under Section 132 of the Act of 1950 and the Division Bench of this Court on 14.07.2022 passed the following order:-

"Heard Shri Mohammad Aslam Beg, learned counsel for the petitioners, Shri Manish Mishra, learned State Counsel and Shri Dilip Kumar Pandey, learned counsel

representing the Land Management Committee / Gaon Sabha.

Having regard to the fact that since in the land in question admeasuring 26 Bighas substantial interest of Gaon Sabha and State is involved, the Court on 27.05.2022 directed the Sub-Divisional Officer to instruct the learned State Counsel and learned counsel representing the Gaon Sabha Shri Dilip Kumar Pandey. The Sub-Divisional Officer Shri Siddharth is present. He has accordingly instructed the learned State Counsel.

Learned Standing Counsel Shri Manish Mishra has stated that Section 195 of the Uttar Pradesh Zamindari Abolition and Land Reform Act as enacted originally provided that Land Management Committee shall have the right to admit any person as Sirdar to any land other than the land falling in any of the clauses mentioned under Section 132 of the Act. He has further brought to our notice that Section 195 was amended in the year 1969 by way of promulgating the Uttar Pradesh Land Laws (Amendment) Act, 1969. By the said amending act 1969 Section 195 was amended and in Section 12 of the said amending act it was provided that in Section 195 of the principal act, after the words "The Land Management Committee," the words "With the previous approval of Assistant Collector-in-charge of the sub-division" shall be inserted. Section 12 of 1969 Amendment Act is extracted here-in-below:-

"12. Amendment of Section 195. __In Section 195 of the principal Act, after the words "the Land Management Committee", where they occur for the first time, the words "With the previous approval of Assistant Collector-in-charge of the sub-division" shall be inserted."

Thus, after enforcement of the Amendment Act 1969 the leases by Land Management Committee can be executed only with the previous approval of the Sub-Divisional Officer.

When we perused the order passed by the Additional Commissioner on 06.09.2018 what we find is the Additional Commissioner (Judicial), Lucknow has completely misread the provisions contained in Section 195. He makes a mention that requirement of prior approval by Sub-Divisional Officer for grant of leases under Section 195 was inserted in the year 1982. However, learned State Counsel as also Shri Dilip Kumar Pandey, learned counsel representing the Gaon Sabha have stated that no such enactment was promulgated in the year 1982 rather certain amendments were brought in the Uttar Pradesh Zamindari Abolition and Land Reform Act in the year 1982. but such amendments made in the year 1982 did not alter Section 195 of the Uttar Pradesh Zamindari Abolition and Land Reform Act as amended by 1969 amendment act.

The order dated 06.09.2018 has been passed by the Additional Commissioner (Judicial) Lucknow in judicial proceedings. The Sub-Divisional Officer is supposed to be trustee of the State / Gaon Sabha land falling within the territory of his sub-division. Accordingly, the officer present today has assured that all possible efforts and measures shall be made and taken to challenge the said order dated 06.09.2018 passed by the Additional Commissioner (Judicial) Lucknow by instituting appropriate proceedings.

At this juncture Shri Manish Mishra, learned Standing Counsel states that in respect of the land in question some individuals have even been declared to be Bhumidhar with transferable rights. The Sub-Divisional Officer accordingly assures the Court that appropriate legal proceedings shall be taken to correct the said mistakes as well.

List this case on 15.09.2022. Sub-Divisional Officer present today shall nominate some responsible officer not below the rank of Naib Tehsildar to be present before the Court for its assistant on the next date. The Sub-Divisional Officer shall also file an affidavit to be sworn by him giving details of the action which may be taken by the State / Gaon Sabha for ensuring compliance of this order. The District Magistrate will also supervise compliance of this order.

Learned State Counsel shall apprise the District Magistrate of this order at the earliest."

(ii) The aforesaid Public Interest Litigation was dismissed vide order dated 17.05.2023, which reads as under:-

"Sri Mohammad Aslam Beg, learned counsel for the petitioners and Ms. Isha Mittal, learned Standing Counsel for the State and its authorities.

The petition involves disputed questions of facts, which cannot be gone into in a petition filed under Article 226 of the Constitution of India. Moreover, counsel for the petitioners admits that after filing of this writ petition, the State has preferred a revision before the Board of Revenue, which is pending.

In view of above developments, present petition, in its present form, is not maintainable and the same is, therefore, dismissed, leaving it open to the petitioners to avail remedy available to them under the law and, if they so desire, to move an application for early disposal of the pending case."

(iii) From the above quoted order dated 14.07.2022, it is apparent that the

Officer who was present on that date before the Division Bench of this Court assured the Court to take all possible efforts and measures for the purposes of challenging the order dated 06.09.2018.

(iv) After the aforesaid, State of U.P. filed the revision before the respondent No.2 on 20.09.2022 and from a bare perusal of paras 13 and 14 of memo of revision, a copy of which has been annexed as Annexure No. 2 to the petition, it is apparent that in specific terms the revisionist-State of U.P. has stated that the order dated 06.09.2018 came to knowledge by means of P.I.L. No. 296 of 2022.

(v) The aforesaid facts related to date of knowledge of order dated 06.09.2018, as appears from the objection on record annexed as Annexure No. SA-3 to the supplementary affidavit filed today which is taken on record, have not been refuted and from the date of knowledge, as indicated in paras 13 and 14 of the memo of revision as also the period of limitation challenging the order dated 06.09.2018, this Court finds that the revision in issue was filed within limitation.

15. Thus, for all the reasons aforesaid as also the observations made in the judgment(s), referred above, including the judgment passed in the case of **D. Saibaba(supra)**, this Court finds that respondent No. 2 has not committed any irregularity or illegality while passing the order dated 08.02.2024. Accordingly, this Court is not inclined to interfere in the impugned order. The petition is **dismissed** accordingly.

16. It is open for the petitioner to contest his case before the revisional authority on merits.

Order Date :- 20.3.2024

Vinay/-