

Court No. - 19

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE No. - 103 of 2024

Applicant :- Smt. Vimla

Opposite Party :- Special Judge (E.C Act)/ Additional Dist. Judge
Court No. 4, Unnao And Others

Counsel for Applicant :- Shiv Nath Tilhari, Dilip Kumar
Pandey, Mohiuddin Khan

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Mohiuddn Khan, the learned counsel for the applicant.
2. This review application has been filed for review of a judgment and order dated 26.04.2016 passed by this Court in Misc. Single No. 8773 of 2016. The petitioner has challenged the aforesaid order by filing Special Leave to Appeal (Civil) No. 18807 of 2016, which was dismissed by the Hon'ble Supreme Court by means of the following order passed on 25.07.2016: -

“Heard learned counsel for the petitioner.

No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.

The special leave petition is accordingly dismissed.

As a sequel to the above, pending interlocutory application, if any, also stands disposed of.”

3. Apparently, the SLP was dismissed after hearing submissions of the learned counsel for the petitioner and upon being satisfied that no ground of interference was made out by the petitioner. While dismissing the SLP, no liberty was granted to the petitioner to file a review petition. After dismissal of the SLP on 25.07.2016, the petitioner has filed this review petition on 24.05.2024, with a delay of 2205 days. The petition is accompanied by an application under Section 5 of the Limitation Act, which bears the date of application as 07/24.05.2024 from which it appears that the application under

Section 5 of the Limitation Act had been prepared on 07.05.2024 and that has been filed on 24.05.2024 causing a further delay of 17 days for filing the review petition.

4. In the affidavit filed in support of the application for condonation of delay, the petitioner has stated that her husband fell seriously ill and left this world for heavenly abode on 09.04.2023. During cleaning of the house in the month of March, 2024 the petitioner got the documents relating to the case and thereafter she got the review petition prepared and filed the same.
5. Para 7 of the affidavit filed in support of the application for condonation of delay makes a reference to a judgment of the Hon'ble Supreme Court in the case of ***Damodaran Pillai & Ors. v. South Indian Bank Ltd.*** 2005 (61) ALR 205 and it has been written in para 7 that it has been held in that judgment that an application under Section 5 of the Limitation Act is not maintainable in a proceeding arising under Order XXI of the Code (Code of Civil Procedure). Application of the said provision has thus expressly been excluded in a proceeding under Order XXI of the Code.
6. The affidavit discloses the qualification of the petitioner is illiterate, yet the contents of para 7 of the affidavit have been verified on the basis of perusal of the records.
7. Chapter IV of Allahabad High Court Rules deals with Affidavits And Oath Commissioners. Rule 8 of Chapter IV is as follows: -

“Affidavits filed or presented in Court:-

The provisions of Rules 5, 6 and 11 of Chapter IX shall, so far as may be, apply to an affidavit filed or presented in Court. It shall be in the language of the Court and shall bear the general hearing:

“In the High Court of Judicature at Allahabad.”

The affidavit and every exhibit annexed thereto shall be marked with the particulars of the case or proceeding in which it is sworn.

The affidavit shall contain no statement which is in the nature of an expression of opinion or argument.”

8. Rule 10 of Chapter IV provides that an affidavit may be sworn by any person having knowledge of the facts deposed to therein. Rule 12 of Chapter IV provides as follows: -

“Facts to be within the deponent's knowledge or source to be stated :-

Except on interlocutory applications, an affidavit shall be confined to such fact as the deponent is able of his own knowledge to prove.

On an interlocutory application when a particular fact is not within the deponent's own knowledge, but is based on his belief or information received from others which he believes to be true, the deponent shall use the expression “I am informed and verily believe such information to be true, “or words to that effect, and shall sufficiently describe for the purpose of identification, the person or persons from whom his information was received.

When any fact is stated on the basis of information derived from a document, full particulars of that document shall be stated and the deponent shall verify that he believes such information to be true.”

9. As per the aforesaid provisions contained in the Allahabad High Court Rules, the affidavit ought to be confined to such facts, as the deponent is able to prove on her own knowledge. In case the any averment is not in her personal knowledge, and she has made the averment on the basis of information received from some other source, she must have disclosed the source of information. There is a clear prohibition against making statements which are in the nature of arguments. Therefore, a mention of a case law in the affidavit is an averment in the nature of arguments and is against the provisions contained in the Allahabad High Court Rules. Moreover, the petitioner is illiterate and she has verified the averment regarding the judgment of the Hon’ble Supreme Court on the basis of perusal of the records.
10. Moreover, neither the present proceedings arise out of Order XXI CPC, nor the aforesaid judgment in the case of ***Damodaran Pillai*** (*supra*) helps the petitioner in any manner, as it has merely held that application under Section 5 of the Limitation Act will not be applicable in proceedings under Order XXI CPC.

11. The aforesaid facts indicate that the affidavit in support of the application under Section 5 of the Limitation Act has been prepared in a careless manner and the averments made in it do not carry any sanctity.
12. 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 added)

13. 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 added)

14. 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 added)

15. The writ petition which was filed by the petitioner's husband, was dismissed on 26.04.2016 and the SLP filed against the same was also dismissed on 25.07.2016.
16. Although the petitioner has stated that her husband fell seriously ill and died on 09.04.2023, she has not stated that since when was her husband ill. No documents regarding illness of the petitioner's husband have been annexed with the affidavit. In these circumstances, the Court cannot believe that the petitioner's remained continuously ill since 25.07.2016 till 09.04.2023. It appears that vague statement regarding illness of the petitioner's husband has been set up as an excuse, rather than an explanation for the delay.
17. The affidavit filed in support of the delay condonation application does not make out sufficient ground for condonation of delay of 2205 days in filing review petition after dismissal of SLP in the year 2016.
18. Accordingly, the application for condonation of delay in filing the review application is *dismissed*.
19. Let the review application be *consigned to records*.

(Subhash Vidyarthi J)

Order Date :- 31.05.2024

Pradeep/-