

Court No. - 27

Case :- CRIMINAL REVISION DEFECTIVE No. - 196 of 2023

Revisionist :- Sanjay Kumar

Opposite Party :- The Principal Judge , Family Court, Lakhimpur
Kheri And Another

Counsel for Revisionist :- Mohd Kamal Khan

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

(Order on Correction Application No. IA/07/2024)

1. The application seeks correction in the order dated 27.02.2024.
2. Heard learned counsel for the applicant.
3. Error appears to be typographical in nature.
4. Accordingly, in 2nd para of the order dated 27.02.2024, words "**Interim relief application**" shall be read in place of words "revision petition".
5. The application is **allowed**. This order shall be read in conjunction with the order dated 27.2.2024.

(Order on Condonation of Delay)

6. The court proceeds to hear the learned counsel for the revisionist on merits.
7. Heard Sri Mohd. Kamal Khan, the learned counsel for the revisionist.
8. In the affidavit filed in support of the condonation of delay in filing a revision against ex-parte judgment and order dated 29.08.2022, the revisionist has stated that he got knowledge of the judgment and order dated 29.08.2022 when the revenue authority gave information of recovery in pursuance of the impugned judgment to him but he has not disclosed the date on which he acquired knowledge of the order dated 29.08.2022.
9. It has been stated in the affidavit that the revisionist engaged an

advocate to obtain certified copies and the date of engaging the advocate has also not been disclosed in the affidavit. The revisionist obtained certified copy of the order dated 27.04.2023 and thereafter he came to Lucknow to engage a counsel but the date of coming to Lucknow and engagement of another counsel has also not been disclosed in the affidavit.

10. The impugned judgment and order dated 29.08.2022 passed by the Family Court in the case filed by the opposite party no.2 under Section 125 Cr.P.C., it is stated that the revisionist had appeared in the proceedings before the family court and had filed his objections and thereafter he abstained from participating from the proceedings and, accordingly, on 11.05.2022 an order was passed to proceed with the case ex-parte against the revisionist. Therefore, it is not a case where the summons of the application under Section 125 Cr.P.C were not served upon the revisionist or that he had no knowledge of the proceedings.

11. From the aforesaid facts, it appear that after appearing in the family court and filing objections against the application under Section 125 Cr.P.C, the applicant willingly abstained from participating in the proceedings, for which reason the proceedings started ex-parte were culminated in the ex-parte and judgment and order dated 29.08.2022.

12. The applicant has filed a revision against the aforesaid order with the delay of 184 days but the applicant has not disclosed the material dates like the date on which he came to know about the impugned order on the date when he applied for obtaining certified copy of the order and the date on which he contacted the counsel for preparation of the revision

13. Although, it is well settled law that while deciding an application under Section 5 of the Limitation Act, the Courts should adopt a

liberal approach, but showing sufficient cause is a *sine qua non* for condonation of delay under Section 5 of the Indian Limitation Act.

14. 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

(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."

Acquisition Officer, (2013) 14 SCC 81 has held that :-

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336], *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953], *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629].)

10. In this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Saov. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.' The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266: 605. Policy of the Limitation Acts. "The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence. An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510], *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

14. In *P. Ramachandra Rao v. State of Karnataka* [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] .

15. *The law on the issue can be summarised 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."*

10. 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."

16. 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."

17. In view of the aforesaid facts, since no sufficient cause has been made out in the affidavit filed in support of the application for condonation of delay, the application is **rejected**.

18. Consequent to the rejection of the application for condonation of delay, let the revision be consigned to record.

(Subhash Vidyarthi,J.)

Order Date :- 18.3.2024
Preeti.