

Court No. - 1

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE
No. - 209 of 2024

Applicant :- Sabhapati Sharma

Opposite Party :- Union Of India Thru. Its Secy. Deptt. Of
Posts Min. Of Comm. And I.T New Delhi And 3 Others

Counsel for Applicant :- In Person

Counsel for Opposite Party :- A.S.G.I.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Subhash Vidyarthi,J.

Order on IA-01 of 2024:

1. Heard Sri Sabhapati Sharma, petitioner in person and perused the records.

2. This is a belated application seeking review of an order dated 03.11.2017, passed by a Coordinate Bench of this Court, whereby Writ Petition No.25013 (S/B) of 2017 filed by the petitioner was dismissed.

3. In the affidavit filed in support of the application for condonation of delay in filing the review application, the applicant has stated that he has received a copy of the order from the Postal Department during the period of Covid-19 pandemic, 2019. Some dispute is going on between him and his brothers. No other fact has been stated in the affidavit to make out a sufficient cause for explaining the delay of 2519 days in filing the review application.

4. The applicant has relied upon a Constitution Bench judgment of Hon'ble Apex Court in the case of *M/s Tilokchand Motichand and others Vs. H.B. Munshi, Commissioner of Sales Tax, Bombay and another: AIR 1970 SC 989*, which was

a writ petition filed under Article 32 of Constitution of India. All the five Hon'ble Judges had given separate judgments. Three Hon'ble Judges had dismissed the petition, whereas two Hon'ble Judges had allowed the petition and resultantly the writ petition was dismissed per majority.

5. Hon'ble M. Hidayatullah, C.J. held that the provisions of Limitation Act do not apply to a petition filed under Article 32 of Constitution of India while utmost expedition is the *sine qua non* for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay.

6. Hon'ble Bachawat, J. held that the statutes of limitation are founded on public policy which is expressed in the maxim '*vigilantibus non dormientibus jura subveniunt*'-the laws aid the vigilant and not those who slumber. The court acts on the analogy of the statute of limitation in the exercise of its jurisdiction under Article 32.

7. Hon'ble Mitter, J. held that "*Court should not lend its aid to a litigant even under Article 32 of the Constitution in case of an inordinate delay in asking for relief and the question of delay ought normally to be measured by the periods fixed for the institution of suits under the Limitation Act.*"

8. Hon'ble Hegde J. also held that "*while not holding that the Limitation Act applies in terms. I am of the view that ordinarily the period fixed by the Limitation Act should be taken to be a true measure of the time within which a person can be allowed to raise a plea successfully under Art. 32 of the Constitution.*"

9. Although, the aforesaid law was laid down in the context of a

writ petition filed under Article 32 of Constitution of India, in that judgment also the Constitution Bench per majority held that a litigant must approach the court promptly. Here the applicant has filed an application for review for which the limitation period of 30 days is prescribed in Article 124 of the Schedule appended to the Limitation Act, 1963.

10. The writ petition filed by the petitioner was dismissed on 03.11.2017 after hearing submissions of the learned counsel for the applicant. The applicant has not stated that his counsel did not inform him about the outcome of writ petition. He has merely stated that he received a copy of the order dated 03.11.2017 from the Postal Department during the period of Covid-19. There was no occasion for the Postal Department to send a copy of order on its own.

11. The certified copy of the order dated 03.11.2017, which has been annexed with the review application has been issued on 03.04.2023 in furtherance of an application submitted by the applicant on 24.03.2023. Therefore, the copy allegedly served on the applicant during Covid-19 pandemic period has not been annexed to substantiate the averment made in the affidavit that the copy of the order dated 03.11.2017 was served on the applicant during Covid-19 pandemic.

12. Although, the applicant has also stated that "*during financial crises, the dispute between the brothers & petitioner has been started*", no particulars of alleged financial crises and reason therefor nor the particulars of disputes between the applicant and his brothers and its effect on filing of review application has been pleaded.

13. 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.”

14. 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)

15. 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)

16. When we examine the facts of the case in the light of the law laid down by Hon'ble Supreme Court in the aforesaid cases, it appears that the applicant has miserably failed to give any explanation so as to make out a sufficient cause for the inordinate delay of 2519 days in filing the review application. In absence of satisfactory explanation for the delay the application for condonation of delay cannot be allowed.

17. Accordingly, the application for condonation of delay of 2519 days in filing the review application is **rejected** without issuing notice to the opposite parties. Consequently, the review application be consigned to records.

[Subhash Vidyarthi, J.] [A.R. Masoodi, J.]

Order Date :- 11.11.2024

Ram.