

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14th January, 2015

+ CRL.REV.P. 573/2014 & CrI. MA 14417/2014 (stay) & CrI. MA 14420/2014

AMARDEEP & OTHERS

..... Petitioners

Through: Mr Vikas Kumar, Adv.

versus

STATE OF DELHI & ANR.

..... Respondent

Through: Ms Fizani Hussain, Additional Public
Prosecutor for the State alongwith SI
Gaurav Police Station Jahangir Puri, Delhi

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

CrI. MA 14418/2015 (condonation of delay of 340 days in filing appeal)

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CrI. MA 14419/2015 (condonation of delay of 149 days in re-filing appeal)

1. These are the applications moved by the revisionist / petitioner seeking condonation of delay of 340 days in filing the revision petition and 149 days in re-filing the same.
2. The applications in hand are very brief running into only three paragraphs, which are reproduced as under:

1. "CrI. MA 14418/2015 (condonation of delay of 340 days in filing appeal)

1. *That the petitioner requested before the ASJ to remove Section 376 IPC from the additional charges and a lot of time has been expired during the hearing by the lower court.*
2. *That finally after not getting the relief from the lower court the petitioner has decided to move the revision petition before the Hon'ble High Court.*
3. *That the petition is already 340 days delayed and petitioner is*

ready to pay the penalty if any imposed by the Court.

2. *Crl. MA 14419/2015 (condonation of delay of 149 days in re-filing appeal)*

1. *That the counsel was not physically fit to appear before the Hon'ble Court.*
2. *That the counsel could not get certified copies of the annexure from the lower court at proper time.*
3. *That the petitioner is ready to pay the delay court fee for the criminal revision petition. The petition is 149 days delayed in re-filing."*

3. It is submitted by counsel for the revisionist / petitioner that the delay has occurred in filing the revision petition as certified copies were not supplied in time. Moreover, the revisionist / petitioner filed writ petition. Due to some technical default same was dismissed. Thereafter, this revision petition has been filed.

4. Learned Additional Public Prosecutor for the State, on the other hand, submits that in order to seek condonation of delay, the revisionist / petitioner has to show sufficient cause which prevented him from seeking legal remedy within time. However, the applications are lacking in material particulars. There is no averment that the revisionist / petitioner filed any writ petition as such no sufficient cause has been shown by the revisionist / petitioner for condonation of delay in filing the present revision petition as such same be dismissed.

5. Needless to say, the applications are filed under Section 5 of the Limitation Act in order to seek condonation of delay. It is incumbent upon the revisionist / petitioner to show that he was prevented by some sufficient cause which resulted in delay in filing the revision petition.

6. In *Inder Industries v. Gemco Electrical Industries* 147 (2008) DLT 305, this Court held as under:

"10. For the purpose of condonation of delay, there must be some cause which can be termed as "sufficient cause". Condonation of delay cannot be allowed only because the delay is unintentional and there are sufficient attending circumstances

to bolster up the same. Crux of the problem is as to whether there is some plausible and reasonable explanation given by the appellant in his application for condonation of delay caused in preferring the appeal and that the impugned order is liable to be interfered with on the ground that it is perverse or patently erroneous. There should be some extenuating circumstances justifying the condonation of delay under Section 5 of the Limitation Act. There must be some compelling reasons for the Court to condone the delay.

11. xx xx xx xx xx xx xx xx
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12. In a recent authority reported in Writ Petition No.2165 of 2006 titled as Sow.Kamalbhai w/o Narasaiyya Shrimal and Narsaiyya s/o Sayanna Shrimal v. Ganpat S/o Vithalrao Gavare, 2007(1)MhLJ 807, it is held:

“15. The expression “sufficient cause” cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such ‘sufficient cause’ stated in the application and as such no interference in the impugned order is called for.”

13. Similar view was taken by the two Division Benches of this Court in Municipal Corporation of Delhi v. Vasudev Sharma, MANU/DE/0540/2005 and Union of India v. Kameshwar Dubey, MANU/DE/2954/2005. Another authority reported in Ran Singh and Others v. Union of India and Others, MANU/DE/8526/2006, a Division Bench of this Court observed:

“4. Both CM Nos. 5369,6683/2005 are barred by time. In the application filed by the petitioners under Section 5 of the Limitation Act, no reason whatsoever has been stated which could be termed as a sufficient cause for condoning the delay in filing these applications.”

14. Further in Raghunath Singh and Others v. Chander Krishan Mahajan and Another, 1993(2) Rent Law Reporter, it was held by the Punjab and Haryana High Court that no indulgence can be shown as the party had been negligent and inactive in pursuing the matter.”

Similar view was taken in *Union of India and others v. C.L. Jain Woolen Mills Pvt. Ltd*, 2006 V AD (Delhi) 718 and it was held as under:

“8. ...It will be useful to refer to the view taken by a Division Bench of this court in the case of Delhi Wakf Board v. Sh. Balbir Singh (RFA No.80/82 decided on 20th March, 2006) where the court after discussing the various judgments, held as under: -

"We may also notice that even the present appeal is barred by time and application being CM No.165/82 was filed for condonation of delay and the reason given is that the appellant came to know of the order of the Court only on 17.02.1982 whereafter he filed this appeal in March, 1982. Though the provisions of Section 5 have been received a liberal construction in recent past, still the Court cannot ignore that the fact where an appeal gets barred by time, a definite right accrues to the opposite party and such right should not be taken away in a routine manner and without disclosure of good and a sufficient cause for condonation of delay.

The application filed for condonation of delay in the present case hardly gives any reason or cause much less a reasonable explanation for condoning the delay. Merely because there was no communication between the client and counsel could hardly be a reason for condoning the delay of two years as the order was pronounced on 5th November, 1980 in the presence of the counsel and the appeal was filed in the year 1982.

At this stage, we may refer to the judgment of the Supreme Court in the case of Ramial and others v. Rewa Coalfields Ltd. AIR 1962 SC 361 wherein the Court held as under:-

"In construing S.5, it is relevant to bear in mind two important considerations. The first consideration is that the explanation of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. ILR 13 Mad. 269, Approved.

It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by S.5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is

at this stage that diligence of the party or its bona fide may fall for consideration;...”

Reference can also be made to a judgment of the Division Bench of the Punjab and Haryana High Court in the case of Sanjeev Babbar and others v. M/s Dev Papers Pvt. Ltd. Vol.CXVIII (1998-1). The Punjab Law Reporter 814 wherein the court held as under:-

“5. As is clear from the above facts that the present petitioner has been most negligent and irresponsible in pursuing his remedy. The revision petition as originally filed was barred by time as is clear from the afore-stated dates. In fact no revision was filed. It was only some papers with the impugned order which were filed without any grounds of revision as required under law. Even the requisite court-fees was not levied. When a petition becomes barred by time, a right accrues to the other party and such a right cannot be taken away by the Court merely on an application which lacks bonafides and does not disclose any sufficient cause for condonation of delay. In the present case, the revision itself maybe barred not only by 67 days, but even more, because after its return on 03.07.1996, it was re-filed on 3.4.1997 with grounds of revision. The delay in filing as well as in re-filing has not been explained in any of the applications. It is unfortunate, but is true, that present case discloses the extent to which a petitioner can be irresponsible and negligent of his own rights. The provisions of Limitation Act cannot be so liberally construed so as to frustrate the very purpose of the provisions of the Limitation Act. In this regard reference can be made to a judgment of the Hon’ble Supreme Court of India in the case of P.K. Ramchandran v. State of Kerala and another, JT, 1997 (8) SC 189, where the Hon’ble Court held as under:

“Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No

costs.”

In the application for condonation of delay hardly any reason has been stated. All that has been stated is that no authorized person had appeared on behalf of the appellant when the decree was passed on 5th November, 1980. Thereafter, application was filed under Order 9 Rule 9 CPC and later on another application was filed under Order 47 Rule 1 CPC. Both these applications were dismissed by the trial court on 16th February, 1980 as not maintainable and the appellant came to know about the said orders on 17th February, 1982, thereafter, an appeal was filed in this Court on 3rd March, 1982. Except giving these dates, the application gives no explanation, much less a sufficient case for justifying the prayer for condonation of delay. The vague averments in the application cannot be the basis by denying a substantial benefit in law to the respondent. The right of the other party cannot be taken away on such averments, which would constitute no sufficient cause on the true and correct interpretation of the sufficient cause contemplated under the provisions of the Limitation Act.

We find no merit in this application and would decline to condone the delay.

7. Coming to the case in hand, a bare perusal of the applications moved by the revisionist / petitioner seeking condonation of delay of 340 days in filing the petition reveals that absolutely no cause much less sufficient cause has been alleged in the application which prevented the revisionist / petitioner from filing the revision in time. It is merely alleged that *‘the petition is already 340 days delayed and the petitioner is ready to pay penalty, if any, imposed by the Court’*.”

8. Not only that, in the application seeking condonation of delay in re-filing the revision petition, it is alleged that the counsel was not physically fit to appear before the Court and he could not get the certified copies from the lower court at proper time and he is ready to pay the delayed court fees. There is no averment as to from which unfitness the counsel was suffering which prevented him from appearing before the Court. As regards non-availability of certified copies, the impugned order is dated 29.04.2013. As per the endorsement made on the certified copies, the revisionist / petitioner applied for getting the certified copies only on 19.07.2014 and was supplied

on 31.07.2014. This shows that the revisionist / petitioner himself was negligent in not taking necessary steps for getting the certified copies in time for the purpose of filing a revision petition.

9. During the course of arguments, a submission was made that a writ petition was filed by the revisionist / petitioner which was ultimately dismissed on some technical ground. However, in the entire revision petition there is no whisper regarding filing of a writ petition. No copy of the same has been filed.

10. Keeping in view all the facts and circumstances, absolutely no explanation has been given by the revisionist / petitioner for the delay in filing the revision petition. That being so, there is no ground to condone the delay in filing and re-filing the revision petition and accordingly both the applications are dismissed.

CRL.REV.P. 573/2014

Since the applications for condonation of delay in filing and re-filing the revision petition have been dismissed, as a corollary, the revision petition is also dismissed.

All pending applications also stand disposed of.

(SUNITA GUPTA)
JUDGE

JANUARY 14, 2015/*rd*