

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 721 of 2015

1. Laxminarayan Pandey S/o Kedarnath Pandey, Aged About 50 Years R/o Village Kusmusi, Police Station Surajpur, Tahsil Bhaiyathan, District Surajpur (Chhattisgarh)
2. Sharda Prasad Pandey, S/o Kedarnath Pandey, Aged About 47 Years R/o Village Kusmusi, Police Station Surajpur, Tahsil Bhaiyathan, District Surajpur (Chhattisgarh)
3. Dilrajkunwar, Wd/o Late Kedarnath Pandey, Aged About 75 Years R/o Village Kusmusi, Police Station Surajpur, Tahsil Bhaiyathan, District Surajpur (Chhattisgarh)

---- Petitioners

Versus

1. Aadim Jati Seva Sahkari Samiti Sonpur (Banja) Through :- The Manager, Tahsil And District Surajpur (Chhattisgarh)
2. Recovery Officer, Aadim Jati Seva Sahkari Samiti, Ambikapur, District Surguja (Chhattisgarh)
3. District Co- Operative Central Bank Ltd., Branch Bhaiyathan, District Surajpur (Chhattisgarh)

---- Respondents

Shri Ashok Kumar Shukla, counsel for the petitioner/s.

Shri Rakesh Pandey, counsel for respondents 2 and 3.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/04/2016

In view of the controversy involved in the matter, the petition is heard finally.

The petitioner has filed this petition aggrieved by order dated 07/07/15 passed by the Co-operative Tribunal, Bilaspur whereby the application for condonation of delay in filing appeal has been dismissed and consequently, the appeal also dismissed as barred by limitation.

2. Learned counsel for the petitioner submitted that the appeal was barred by 6 months and 18 days. An application for condonation of delay was moved and it is stated that as the mother of the petitioner was seriously ill and she was taken for treatment, the appeal could not be filed within limitation. Medical certificates were also filed. However, the Tribunal has taken a very narrow approach and dismissed the application disbelieving the medical certificate and the reasons stated by the petitioner. Learned counsel relies upon decision of the Supreme Court in the case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (12) SCC 649.**

3. On the other hand, learned counsel for the respondents 2 and 3 opposes prayer and submits that there was no proper explanation for delay. Each day of delay was required to be explained. In addition to the petitioner, there were other petitioners and no explanation has come forth as to why they could not file appeal.

4. In the case of **Esha Bhattacharjee (supra)**, the Supreme Court laid down principles applicable to an application for condonation of delay as follows -

“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 it 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 encapsulate

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 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.

ix) The conduct, behavior 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 the 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 scrutinised 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.

xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone the delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

xv) 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

xvi) 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.

xvii) 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.”

5. Present is a case where delay was of 6 months and 18 days and the explanation offered was serious illness of mother of the petitioner and time consumed in getting her treatment done. Not only this, medical certificate was also submitted whereas the Tribunal has taken an unduly restricted approach. The Supreme Court has clearly held 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. The term 'sufficient cause' is required to be understood in proper perspective. It has also been highlighted that substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis. It has also been highlighted that adherence to strict proof should not affect public justice. It has also been observed that a distinction has to be drawn between inordinate delay and a delay of short duration.

6. If the impugned order is tested on the touch stone of the aforesaid principle, the same is found unsustainable. The Tribunal, in the circumstances and for the cause stated in the application, which was supported by medical certificate, ought to have condoned the delay. The order has resulted in miscarriage of justice. The impugned order is set aside. Petition is allowed. The matter is remanded back for adjudication of the case on merits.

Sd/-
(Manindra Mohan Shrivastava)
Judge