

HIGH COURT OF CHHATTISGARH AT BILASPUR

REVIEW PETITION NO. 2 OF 2017

1. State of Chhattisgarh, through the Secretary, Department of Cooperative, Govt. of Chhattisgarh, Mahanadi Bhavan, P.O. Rakhi, Naya Raipur, District Raipur, Chhattisgarh
2. The Registrar, Cooperative Societies, Chhattisgarh Vivekanand Complex, Vivekanand Nagar, Pension Bada Chowk, Raipur, Chhattisgarh
3. The Joint Registrar Cooperative Societies Raipur, Chhattisgarh

... Applicants

Versus

1. Kuber Grih Nirman Sahkari Samiti Maryadit Rohinipuram, Raipur, through its Vice Chairman, K.P.Tiwari S/o Shri Satanand Tiwari, Aged About 44 Years, R/o V I P Colony Shankar Nagar, Raipur, Chhattisgarh
2. Priyadarshini Grih Nirman Sahkari Samiti Maryadit, Through Its Chairman Rajesh Shrivastava, S/o Late Shri B.C. Shrivastava, Aged About 65 Years R/o Priyadarshini Nagar, Raipur, Chhattisgarh
3. Rajiv Grih Nirman Sahkari Samiti Maryadit, Through Its Vice Chairman, B.M. Chilamwar, S/o Late Shri M.P.Chilamwar, Aged About 66 Years, R/o Bajaj Colony, Katora Talab, Raipur, Chhattisgarh
4. Ramanuj Tiwari S/o Late Shri Jagannath Prasad Tiwari, Aged About 62 Years Member Priyadarshini Grih Nirman Sahkari Samiti Maryadit, R/o Priyadarshini Nagar, Raipur, Chhattisgarh
5. Sevak Ram Pandey S/o Late Shri G.R.Pandey, Aged About 68 Years Member Kuber Grih Nirman Sahkari Samiti Maryadit, R/o Rohinipuram, Raipur, Chhattisgarh

... Non-applicants

For Applicants : Mr. Prafull Bharat, Additional Advocate General.

Hon'ble Shri Pritinker Diwaker, Acting Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/03/2017

Per P. SAM KOSHY, J.

1. Heard on I.A. No.1 of 2017, which is an application for condonation of delay in filing the present review petition, which is barred by limitation of 574 days.
2. The present review petition has been filed by the State Government seeking for a review of order dated 28.4.2015 passed by the Division Bench of this Court in Writ Appeal No. 1060 of 2012.

3. The present review petition has been filed on 28.12.2016. There is an inordinate unexplained delay of 574 days in the filing of the same. Along with the review petition, there is also an application for condonation of delay i.e. I.A. No. 1 of 2017. Relevant portion is paragraph 3 of the said application. This is the only explanation which has been given by the Applicants seeking for condonation of delay of 574 days.

4. What is pertinent to take note is the fact that in the application for condonation of delay, no specific details have been given by the Applicants in respect of each days delay consumed in the filing of the present review petition. What also cannot be brushed aside is the fact that the Applicants at no point of time have stated that they were not aware of the order of the Division Bench and therefore it has to be presumed that it was within their knowledge and the said plea could not have also been raised, as the order in the writ appeal was a bipartite order and was passed on Board in the presence of the lawyers representing each of the parties. So for all practical purposes, it has to be accepted that the Applicants were aware of the order on the date of its pronouncement i.e. 28.4.2015. We cannot also ignore the plea that has been made in the I.A. No.1 of 2017, which shows that the Non-applicants in the present review petition, i.e., the Appellants before the Appellate Court, had meanwhile also filed a contempt case which too has got dismissed, as per the pleadings of the Applicants itself, and that too was on 7.9.2016. Even thereafter there is a delay of more than about 110 days in the filing of the present review petition.

5. In the case of *Cicily Kallarackal v. Vehicle Factory* [2012 (8) SCC 524], dealing with the issue of condonation of delay, while holding that a liberal approach in condoning the delay would lead to negating the law of limitation, the Hon'ble Supreme Court in paragraph 7 has held as under:

“7. In the instant case, condoning such an inordinate delay without any sufficient cause would amount to substituting the period of limitation by this Court in place of the period prescribed by the legislature for filing the special leave petition. Therefore, we do not see any cogent reason to condone the delay.”

6. Again in 2013 (12) SCC 649 (Esha Bhattacharjee v. Raghunathpur Nafar Academy), the Hon'ble Supreme Court in paragraphs 21 and 22 had laid down certain guidelines to be borne in mind while dealing with the application for condonation of delay, relevant portion of which is reproduced herein under:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) xxx xxx xxx

21.2. (ii) xxx xxx xxx

21.3. (iii) xxx xxx xxx

21.4. (iv) xxx xxx xxx

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) xxx xxx xxx

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (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.

21.9. (ix) xxx xxx xxx

21.10. (x) xxx xxx xxx

21.11. (xi) xxx xxx xxx

21.12. (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.

21.13. (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:

22.1. (a) 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 delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (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.

22.3. (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.

22.4. (d) 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.”

7. Recently also in the case of *Basawaraj & Ors. v. Special Land Acquisition Officer* [2013 (14) SCC 81], dealing with a plethora of preceding judgments of the Hon'ble Supreme Court, considering the point of sufficient cause, the Supreme Court in paragraph 9 has discussed in the following manner:

“9. Sufficient cause is the cause for which 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 view point 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 Corporation Ltd. v. Bhootnath Banerjee & Ors.*, AIR 1964 SC 1336; *Lala Matadin v. A. Narayanan*, AIR 1970 SC 1953; *Parimal v. Veena @ Bharti* AIR 2011 SC 1150; and *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* AIR 2012 SC 1629.)”

Again dealing with the issue of limitation in paragraphs 12 and 15 it was held as under:

“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.

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 bonafide 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.”

8. The view taken in the case of Basawaraj (supra) has further been reiterated in 2014 (11) SCC 351 (Brijesh Kumar & Ors. v. State of Haryana & Ors.).

9. On a careful consideration of the entire gamut of facts and circumstances of the present review petition and applying the standards as envisaged in the preceding paragraphs, we are of the considered opinion that the present is not a fit case calling for condoning the delay of 574 days in preferring the review petition, as there is no sufficient cause explained by the Applicants.

10. In view of above, I.A. No. 1 of 2017, the application for condonation of delay in filing the present review petition, is dismissed. Consequently, the review petition also stands dismissed.

Sd/-
(Pritinker Diwaker)
Acting Chief Justice

Sd/-
(P. Sam Koshy)
Judge