

\$~S-1.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3734/2000 with C.M. No. 32985/2016, C.M. No.
32986/2016 and C.M. No. 32987/2016

NATIONAL AGRI.COOP MKTG.FED.OF INDIA LTD

..... Petitioner

Through: Mr. Rakesh Kumar, Trilochan Ravi
and Ms. Anubha Singh, Advocates

versus

LD.PRESIDING OFFICER LABOUR COURT & ORS.. Respondents

Through: Mr. S.R. Sharma, Advocate for LR
of respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

10.08.2018

%

C.M. No. 32988/2016 (for condonation of delay of 2068 days in filing the application), C.M. No. 32987/2016 (under Order XXII Rule 4CPC) & C.M. No. 32989/2016

1. These applications have been moved by five persons, who claim to be the legal representatives of the respondent No.2– Smt. Sheela Devi in the writ petition. The five persons are the husband– who was 82 years old at the time of moving of the application on 10.08.2016, five children comprising of two sons and three daughters aged between 35 years and 53 years as on the date of moving of the application. By C.M. No. 32988/2016, the applicants seek condonation of delay of 2068 days in filing C.M. No. 32987/2016 under order XXII Rule 4 read with section 151 of the C.P.C to bring on record the legal representatives of the deceased respondent No.2-

Smt. Sheela Devi. Vide C.M.No. 32986/2016, they seek condonation of delay of 1275 days in filing of the application seeking recall (the delay being between 21.01.2013 and 08.08.2016) i.e. C.M. No. 32985/2016. By this application, the applicants are seeking setting aside/ recall of the order dated 21.01.2013, whereby the writ petition was disposed of by this Court.

2. The petitioner had preferred the writ petition to assail the award dated 03.12.1999 passed by the Learned Presiding Officer Labour Court-IV in I.D. No. 207/1993. By the said award, the Labour Court had directed reinstatement with full back wages of the two workmen, namely, Smt. Sheela Devi-respondent No.2 and Smt. Shakuntala-respondent 3. The writ petition was preferred in the year 2000. As it now transpires Smt. Sheela Devi passed away on 12.11.2010 during the pendency of the writ petition. No application to bring on record the legal representatives of the deceased Smt. Sheela Devi was moved by the petitioner or his legal representatives. The petitioner claims not to have any knowledge about the demise of Smt. Sheela Devi and, therefore, no application could be moved by the petitioner. Evidently Smt. Shakuntala-respondent No.3 also passed away during the pendency of the writ petition, and upon application being moved by her legal representatives, they were brought on record.

3. On 21.01.2013, the following order came to be passed by the Court.

“Respondent No.3(b) is present. He states that respondent No.2(a) Sh.Hari Ram, the husband of the deceased Smt. Shakuntla and father of respondent No.3(b) has also passed away on 23.04.2005.

It is surprising that no further application has been moved to bring his legal heirs on record. In any event, respondent No.3(b) states that he has settled the disputes with the petitioner.

The representative of the petitioner has brought a cheque bearing No.174230 dated 19.12.2012 for an amount of Rs.27,000/- drawn in favour of Sh. Raj Kumar, which he accepts in full & final settlement of all the claims of late Smt. Shakuntala against the petitioner in terms of the impugned award.

The representative of the petitioner Mr. R.P. Sharma, Assistant Manager, states that the claim of respondent No.2 Smt. Sheela Devi already stands settled. She is not present despite service.

In view of the aforesaid position, the petition stands disposed of, as satisfied.”

4. Thus, it would be seen that so far as Smt. Sheela Devi was concerned, it was informed to the Court that she had already settled her claim with the petitioner. On the said date, none appeared on behalf of the respondent no. 2 and this aspect was also noticed in the order dated 21.01.2013. Consequently, the writ petition was disposed of.

5. The aforesaid applications including C.M. No. 32988/2016 and C.M. No. 32986/2016 were moved by the applicants firstly on 10.08.2016 and after repeated refilling, they came to be listed before the Court on 09.09.2016. The reasons found in the aforesaid two applications to seek condonation of delay are the same. The applications contain the following identical averments.

“The applicants could not come to know about proceedings went in the above-noted petition thereafter as she herself used to pursue the case. She also did not say anything about the proceedings or the counsel for her. Therefore applicant could not pursue the matter any further.”

6. Learned counsel for the applicants submits that since the legal representatives of the deceased Smt. Sheela Devi were themselves old and independent, they were unaware of the present proceedings since Smt. Sheela Devi was pursuing her case on her own. She had not informed her legal representatives of the said proceedings.

7. Learned counsel for the applicant submits that the said explanation is completely satisfactory. In support of his submission, he places reliance on the judgement of the Supreme Court in *N. Balakrishnan v. M. Krishnamurthy* AIR 1998 SC 3222 and in particular the following passage from the said decision.

*“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. **Length of delay is no matter, acceptability of the explanation is the only criterion.** Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay*

afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

*11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a*

legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366 : AIR 1972 SC 749] .

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss” (emphasis supplied)

8. On a reading of the aforesaid decision, what emerges is that first and foremost, the explanation furnished to seek condonation of delay should be found by the Court to be acceptable and satisfactory. While considering an application to seek condonation of delay, the Court would also have to examine whether the opposite party has been put to any prejudice on account of the said delay.

9. The explanation as furnished by the applicant– which is extracted hereinabove, is not convincing and satisfactory at all. The legal representatives include not only the grown up children of the deceased– respondent No.2, but also her husband. When Smt. Sheela Devi passed away in the year 2010, her husband Sh. Ram Saran would have been about 74 years considering that he was 82 years old as in August 2016. At the time of demise of Smt. Sheela Devi all her children were also major and grown up. At that point of time her eldest daughter was about 47 years and the youngest child/ daughter was about 29 years. There were three other children, including two sons who would have been about 44 and 36 years of age in the year 2010.

10. Since the services of Smt. Sheela Devi were terminated and litigation was, firstly, pending before the Labour Court and then before this Court, it does not stand to reason that neither her husband, nor her children would be aware of the same. In fact, the stand taken in paragraph 3 of the aforesaid applications is contradicted by some of the averments made in paragraph 4. In paragraph 4 it is, inter alia, stated that in the last week of July, 2016 the counsel representing Smt. Sheela Devi was contacted by the daughter– Anita as she recollected that once the said counsel appeared in the matter and she had asked him to find out the status.

11. This explanation furnished by the applicants for their highly belated move in seeking substitution as the legal representatives of the deceased–respondent No.2, is not convincing and satisfactory at all. On the one hand, the applicants feign ignorance of the writ proceedings. On the other hand, it is claimed that the eldest daughter contacted the counsel- which means she was aware of the case and the counsel handling the same.

12. I also find that the immense delay in bringing on record the legal representatives of the deceased- respondent no.2, if condoned, would lead to prejudice to the petitioner.

13. The industrial dispute was pending since the year 1993. The Labour Court award came on 03.012.1999 where after the writ petition was preferred in the year 2000. The writ petition remained pending for over 12 years. During this period, the legal representatives of the deceased–respondent No.3, Smt. Shakuntala, accepted an amount of Rs. 27,000/- in full and final settlement of the award. It was then stated by the petitioner’s representatives that the claim of respondent No.2– Smt. Sheela Devi already stood settled. With the passage of time, it would not be fair to expect of the petitioner to produce the said settlement with Late. Smt. Sheela Devi– if one had been arrived at and implemented. The possibility of the legal representatives of late Smt. Sheela Devi deliberately not moving earlier– to allow passage of time so that the petitioner may not be able to substantiate the settlement made on 21.01.2013, cannot be ruled out.

14. Learned counsel for the petitioner submits that the officer who had appeared before the court and made settlement on 21.01.2013 had since retired on superannuation.

15. There is yet another aspect of the matter that may be noticed. The

record shows that late Smt. Sheela Devi had disclosed her age, in the affidavit filed by her before this Court as 50 years as on 16.07.2001. She passed away in 2010 at the age of about 60 years according to the averments made by the applicants themselves. Pertinently, even according to the applicants, late Smt. Sheela Devi received payment under Section 17-B of the Industrial Disputes Act till January 2010.

16. Thus, in any event she could not have got any further payment and she was substantially compensated for the wrong done to her by her illegal termination— even if one were to assume that the said termination was illegal.

17. For all the aforesaid reasons, I find no merit in these applications.

18. The application stands disposed of in the aforesaid terms. .

VIPIN SANGHI, J

AUGUST 10, 2018

N.Khanna