HIGH COURT OF MADHYA PRADESH AT JABALPUR

C.R. No.98/2016

Rajiya Khan & others

Vs.

State of M.P. & another

[Single Bench : Hon'ble Smt. Justice Anjuli Palo]

Shri Ankit Saxena, Counsel for the applicants.

Shri J.A. Shah, Government Advocate for the respondents-State.

O R D E R
(29/05/2020)

This civil revision under Section 115 of the Code of Civil Procedure has been preferred by the applicants, being aggrieved by the order dated 20.10.2015 passed by the First A.D.J., Bhopal in Civil Appeal No.4248/2016. Vide aforesaid impugned order the trial Court has allowed the application for condoning the inordinate delay of 9 years in filing the civil appeal by the respondents. The aforesaid application was allowed in the light of law laid down in the case of ***International Association of Lions Clubs vs. Jagjit Singh Khanna*** reported in ILR 2008 (M.P.) 2342.

2. It is not in dispute that the respondents are State Government and its instrumentality and due to procedural formalities and other cogent reasons, the delay was caused in filing the civil appeal against the judgment dated 14.05.1999.

3. Learned counsel for the applicants strongly opposed the contentions of the respondents and submitted that learned Court below has wrongly condoned the delay, which was inordinate in nature.

4. In this context, it is appropriate to refer to the decisions rendered in the cases of ***Manoharan vs. Sivaranjan & ors. passed by the Supreme Court in Civil Appeal No.10581/2013*** and also in ***State of Haryana vs. Chandra Mani & others, (1996) 3 SCC 132***.

5. In the case of ***State of Haryana (supra),*** the Supreme Court discussed various cases and held that condonation of delay is a question of fact depending upon the facts and circumstances of particular case. In paragraph 7, the Supreme Court discussed the case of the ***Collector, Land Acquisition vs. Katiji (1987) 2 SCC 107,*** wherein it was held that:-

> ".....Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of justice. The expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned."

6. Further, in the aforesaid case of ***State of Haryana (supra),*** the Supreme Court in paragraph 8 has also held as under :-

> "8. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment

> sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represent collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay was accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Smt. Prabha v. Ram Parkash Kalra [(1987) Supp. SCC 339], this Court had held that the court should not adopt an injustice- oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

7. In the case of ***Nand Kishore vs. State of Punjab, 1995 (6) SCC 614,*** the Supreme Court under the peculiar circumstances of the case, condoned the delay in approaching the Court of about 31 years. In case of ***N. Balkrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123,*** the Supreme Court has held as under :-

> "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 want of acceptable explanation whereas in certain other cases delay of 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 reversional jurisdiction, unless the

exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the dela. In such cases, the superior cut 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 untrammeled 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. Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

11. ….....

12. A court knows that refusal to condone delay would result 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 Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [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 delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a 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.”

8. In the light of principles laid down in the aforesaid decisions governing the field, in the opinion of this Court, the learned Court below has rightly condoned the delay in favour of the respondents. Because, the delay might be inordinate one, but for the same sufficient reason has properly been explained by the respondents. Hence, this Court is not inclined to interfere in the order passed by the Court below under Section 5 of the Limitation Act.

9. Accordingly, this civil revision is hereby **dismissed**.

(Smt. Anjuli Palo)
Judge

RJ

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