

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

Civil Application (CAO) NO.21 of 2021 IN Misc. Civil Application St.No.5757/2020
IN
Writ Petition No.7009/2019 (D)

Laxmikant Sambhaji Khade **Versus** The State of Maharashtra and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.M. Sudame, Advocate for applicant.
Ms. Mayuri Deshmukh, AGP for respondent nos.1 and 2.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.
DATED : 08.02.2021.**

The applicant, who is the original petitioner in Writ Petition has filed this application seeking condonation of delay of 23 days in filing the application for review of the judgment delivered in Writ Petition No.7009 of 2019 on 20th January 2020. The application for condonation of delay is based on the assumption that Article 124 of the Limitation Act applies to the judgment delivered by the High Court in the exercise of power under Article 226 of the Constitution of India.

2. During the course of hearing, a query was made to the advocate for the applicant as to whether Article 124 of the Limitation Act is applicable to the application seeking review of the judgment passed in exercise of power under Article 226 of the Constitution of

India. Since a question regarding the applicability of the provisions of the Limitation Act to the applications seeking review of the judgment delivered in exercise of power under Article 226 of the Constitution of India arises in a number of matters, we heard Shri Sudame, learned Advocate for the applicant extensively on the said point.

3. Shri Sudame, the learned Advocate for the applicant placed reliance on the judgment of the Apex Court in the case of *M/s. Tilokchand Motichand and others Vs. H.B.Munshi and another* reported in *1969 (1) SCC 110* and also relied on an unreported order of this Court in Civil Application No.(CAO) No.44 of 2018 in Misc.Civil Application Stamp No.17327 of 2017 in Writ Petition No.4974 of 2014 in the case of (**Ganesh Ramdas Patil Vs Buldana Zilla Dudh Utpadak Sah. Sangh and Others**) submitted that the learned Single Judge of this Court (Z.A.Haq, J.) after extensively considering the law on the point, has taken a view that Article 124 of the Limitation Act does not govern application seeking review of the judgment delivered in the Writ Petition under Article 226 of the Constitution of India and, therefore, filing an application for condonation of delay is not necessary.

4. We have reflected over the said issue and, in our opinion, the issue involved being of seminal importance, it needs to be scrutinized more extensively.

5. Article 124 of Schedule of the Limitation Act, provides for a period of limitation for review of judgment/order by a Court other than the Supreme Court, to be 30 days from the date of the decree or order.

6. Since we are dealing with the issue about the applicability of the Limitation Act to an application for review of the judgment passed in exercise of power under Article 226 of the Constitution of India, it is necessary to discuss nature of power under Article 226 of the Constitution of India. Writ jurisdiction under Article 226 of the Constitution of India, is an extraordinary discretionary jurisdiction bestowed on the High Court by the Constitution of India, 1950.

No period of the limitation is prescribed under the Limitation Act, 1963 or otherwise for the exercise of inherent powers under Article 226 of the Constitution of India . However, this would not mean that the aspect of laches would be ignored altogether. It is otherwise settled that whenever no specific period of limitation is prescribed yet, a party has to approach the High Court within a reasonable period. Such reasonable period has to be construed in the facts and circumstances of each case.

7. The petition presented before the High Court under Article 226 of the Constitution of India cannot be regarded as an application

under the Code of Civil Procedure. The provisions of the Code of Civil Procedure *stricto sensu* does not apply to writ proceedings, which is clear, in view of explanation introduced to Section 141 of the Code of Civil Procedure, 1908 vide Act of 104 of 1976. Consequently, for filing an application for review of a judgment or order in exercise of power under Article 226 of the Constitution of India, Order XLVII Rule (1) of the Code of Civil Procedure will also not apply. It is entirely a different matter that, the High Court may consider the parameters laid down by provisions of the Code of Civil Procedure, which is based on equity, justice and good conscience. In an application under Article 226 of the Constitution of India, the provisions regarding the addition of the parties or substitution are not governed by the provisions of the Limitation Act. The Court may adopt these principles for its guidance. But, the provisions of the Limitation Act shall not apply to the proceedings under Article 226 of the Constitution of India.

8. It needs to be noted that the Limitation Act may not apply to the proceedings under Article 226. The Limitation Act is a statute based on public policy, which reflects legislative intent to ensure that no lis is brought to a Court of law for adjudication beyond the period, which has been prescribed by Legislature. Since, the Limitation Act reflects the public policy as regards the period of limitation within which, a lis shall be brought before a Court of law, the High Court too, while exercising

its jurisdiction under Article 226 of the Constitution of India would normally not deviate from such public policy.

9. The Constitution Bench in the case of **State Of Madhya Pradesh vs Bhailal Bhai & Ors** reported in AIR 1964 SC 1006 had an occasion to discuss the object and applicability of period of limitation, as provided by the Limitation Act to the proceedings under Article 226 of the Constitution of India and observed as under:

“It appears to us, however, that the maximum period fixed by the legislature as the time within which the relief by a Suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. But where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956, the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr.Andley seems to argue, the mistake was discovered much later, this would be a controversial fact, which cannot conveniently be decided in writ proceedings. In either view of the matter, we are of the opinion that the

orders of refund made by the High Court in these seven cases cannot be sustained”.

10. Another Constitution Bench in the case of ***Tilokchand Motichand and others (supra)*** had occasion to consider contours of exercise of power under Articles 32 and 226 of the Constitution of India in the context of infraction of fundamental rights. The Constitution Bench in paragraph 65 held as under:

"The Limitation Acts do not in terms apply to claims against the State in respect of violation of fundamental rights. A person complaining of infraction of any such rights has one of three courses open to him. He can either make an application under [Article 226](#) of the Constitution to a High Court or he can make an application to this Court under [Article 32](#) of the Constitution, or he can file a suit asking for appropriate reliefs. The decisions of various High Courts in India have firmly laid down that in the matter of the issue of a writ under [Article 226](#) the courts have a discretion and may in suitable cases refuse to give relief to the person approaching it even though on the merits the applicant has a substantial complaint as regards violation of fundamental rights. Although the Limitation Act does not apply, the courts have refused to give relief in cases of long or unreasonable delay. As noted above in Bhailal Bhai's case (supra), it was observed that the "maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under [Article 226](#) can be measured." On the question of delay, we see no reason to hold that a different test ought to be applied when a party comes to this Court under [Article 32](#) from one applicable to applications under [Article 226](#). There is a public policy behind all statutes of limitation and according to Halsbury's Laws of England (Third Edition, Vol. 24), [Art.](#)

330 at p. 181:

"The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim and (3) that persons with good causes of action should pursue them with reasonable diligence."

11. There is nothing in Article 226 of the Constitution of India, which precludes the High Court from exercising the power of a review which inheres in every High Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The power of review is exercised by the High Court in the exercise of its inherent plenary power to do complete justice for which no provision is required. We are conscious that this Court while considering the application seeking review of an order passed under Article 226 of the Constitution of India exercises plenary power. But it is equally true that there is no limitation provided for filing an application for review of an order passed under Article 226 of the Constitution of India. However, as observed in unambiguous terms in case of ***State of MP Vs Bhailal Bhai*** (*supra*) that though the provisions of the Limitation Act do not apply to grant of relief, in our opinion, it would broadly apply in case of an application seeking review of the order passed under Article 226 of the Constitution of India. As pointed out earlier in the

said judgment of the Supreme Court, which has observed that the maximum period defined by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured. As stated earlier, Article 124 of Schedule to the Limitation Act, prescribes the period of 30 days for filing review application. On the same analogy of the principles laid down in the case of *Bhailal Bhai* (supra) the maximum period fixed by the Legislature as the time within which the relief of review must be filed may be ordinarily be taken to be a reasonable period by which delay in seeking the remedy of the review can be measured.

12. In the face of the decision in *Bhailal Bhai* (supra) and the decision in the case of *Tilokchand Motichand and others* (supra), there can be no escape from the conclusion that the power of the High Court is not barred in considering the application for review of an order passed under Article 226 of the Constitution of India even if the application seeking review of the order, is filed beyond the prescribed period of 30 days from the date of passing of the order. When the High Court entertains an application for review even after expiry of the period of 30 days, the Court as a measure of policy must be satisfied that there is sufficient cause preventing the applicant from filing an

application of review.

13. It is, therefore, imperative that an application, seeking review of an order passed in exercise of power under Article 226 of the Constitution of India, discloses sufficient cause as to why such application has not been filed expeditiously. The High Court in a given case may decline to entertain such an application for review of an order passed under Article 226 on the ground of negligence, inordinate delay or laches.

14. It is true that provisions of Order XLVII of the Code of Civil Procedure do not strictly apply to an application for review or to reconsider the decision under Article 226 of the Constitution of India. But even then if an application invoking the power of this Court under Article 226 of the Constitution of India to review its decision is filed after a long lapse of time without explaining the delay properly, we are of the view that the Court would be justified in rejecting such application on that ground alone, as it would be a sound exercise of discretion. Thus, an application for review of the judgment passed in exercise of power under Article 226 of the Constitution of India, the period of 30 days prescribed by article 124 of the Limitation Act, which is nothing but, measurable standard, shall be considered as a reasonable period of time.

15. For the reasons discussed above, we hold that Article 124 of the Limitation Act would not apply to an application for review of an order or the judgment passed in exercise of power under Article 226 of the Constitution of India. We clarify that the High Court may not, ordinarily entertain an application for review if such application is made after the lapse of a period of 30 days on the ground of public policy not to entertain such application beyond the period of 30 days after passing of the order. It would be, however, open to the High Court to entertain in a given case, the application for review even if such application is filed beyond the period of 30 days, provided the High Court is satisfied that the applicant has sufficient cause for not being able to apply for review earlier. The delay in filing an application for review can be explained in an application for the review itself and separate application praying for condonation of delay is not necessary.

16. In the light of the above discussion, we have considered the reason for condonation of delay stated by the applicant herein. After considering the reason stated by the applicant, we are satisfied that the applicant has satisfactorily explained the delay in filing the application for review of the order dated 20.1.2020. We deem it proper to consider the application for review on merits.

Civil Application No.21/21 is allowed. There shall be no order
as to costs.

JUDGE

JUDGE

Ambulkar