

June 27, 2023
Sl. No.17
Court No.19
s.biswas

CO 623 of 2023

Mrinal Sen
vs.
Debabrata Banik

Mr. Jayanta Narayan Chatterjee
Mr. Debashis Banerjee
Mr. Shuvanil Chakraborty
Ms. Nandini Chatterjee
Ms. Tanuja Banerjee
Mr. Rakesh Jana

... for the petitioner

The revisional application has been filed challenging an order dated January 24, 2023, passed by the learned Additional District Judge, 2nd Court, Serampore in Misc. Appeal No.29 of 2019, which was subsequently re-numbered as Misc. Appeal 25 of 2021. By the order impugned, the learned lower appellate court affirmed the order dated March 28, 2019 passed by the learned Civil Judge (Junior Division), 4th Court, Serampore in Misc. Case No.762 of 2017.

The petitioner is the judgment debtor/defendant in the eviction suit. The petitioner suffered an ex parte decree. The petitioner, thereafter, filed an application for setting aside the ex parte decree under Order 9 Rule 13 of the Code of Civil Procedure along with the application for condonation of delay of 572 days in filing the misc. case. The application for condonation of delay came up for hearing before the learned Civil Judge (Junior Division), 4th Court, Serampore vide Misc. Case No.762 of 2017.

The learned trial court, upon elaborately discussing the cause pleaded in the application for condonation of delay, came to a finding that the petitioner had failed to explain the delay. It was found that even after the ex parte decree was passed against the petitioner, the petitioner was not diligent in pursuing his remedy. Such order was challenged before the learned lower appellate court vide Misc. Appeal No.25 of 2021 (re-numbered). The learned lower appellate court upheld the order of dismissal of the application for condonation of delay, on the following grounds:-

- a) the petitioner had made incorrect statements in the application for condonation of delay;
- b) even after the death of the father, the petitioner had appeared before the court, but suddenly stopped appearing thereafter. Hence, the plea that due to the father's demise, the petitioner was unable to keep a track of the suit was not believable.
- c) in the suit for eviction, the petitioner was also a defaulter and did not take any steps to pay up the rents and arrears;
- d) the factum of illness of the petitioner was not supported by any medical documents.

Having considered the orders passed by both the courts below, this court is of the view that Mr. Chakraborty's contention that the death of the father and illness of the petitioner were primary factors behind the inaction of the petitioner, had not been established.

Mr. Chakraborty further stated that it was the duty of the learned advocate to contact his client and advise accordingly.

With regard to contention of the petitioner not being well-advised by the learned advocate and his clerk, the learned trial Judge has found that the petitioner had been constantly negligent in pursuing the suit. The blame on the learned Advocate and the Advocate's clerk was found to be unfounded. Only when the execution case was filed, the petitioner woke up. It has been found that the contention of the petitioner that he was suffering from mental and physical stress after his father's demise and also failed to take steps due to his illness, were not supported by any cogent evidence. The petitioner appeared in the suit on January 3, 2021, by filing a vakalatnama. Applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act were filed. Several dates were fixed for hearing of the application under Section 7(2) of the Act between January 3, 2012 and November 17, 2014.

Thereafter, on November 17, 2014, the application was disposed of and the petitioner was directed to pay the amount of Rs.6380/- as arrears within December 19, 2014. The amount of arrears was not duly paid and the suit was fixed in the peremptory board.

Thus, it appears to this court that the petitioner is also a defaulter in an eviction suit and he had missed his chance to pay up the arrears rent to seek protection from eviction. The death certificate of the father, which was considered by the learned trial judge, indicated that the father died on January 4, 2015. After January 4, 2015, the petitioner appeared before the court on three occasions and prayed for adjournments. On May 15, 2015, the petitioner appeared before the court and contested the application under Order 9 Rule 7 of the Code of Civil Procedure. Although, the petitioner was allegedly suffering from illness, no supporting documents had been produced. The explanation with regard to being misguided by the counsel was disbelieved by the court.

Thus, the application under Section 5 of the Limitation Act was rejected.

In the case in hand, both the learned courts have considered each and every contention of the petitioner and his evidence and found that the

reasons were not sufficient to condone the inordinate delay of 572 days. The plea of mental and physical stress due to the death of the father and the physical ailment of the petitioner, were disbelieved. The allegation against the counsel was disbelieved as the conduct of the petitioner was found to be negligent, mala fide and reckless. Delay cannot be condoned as a matter of right, especially at this stage, when the records do not support the explanation given by the petitioner. There is ample evidence which points towards the lack of due diligence of the petitioner. The law of limitation has been prescribed in order to ensure that there is an end to litigation and a party cannot drag a proceeding for unlimited period. The cause of delay must be genuine, bona fide and believable. There must be absence of laches, negligence and carelessness.

In the case of ***P.K. Ramachandran v. State of Kerala***, reported in **(1997) 7 SCC 556**, the Hon'ble Apex Court, while refusing to condone the delay of 565 days, observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same was not to be condoned, lightly.

In the matter of ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project,***

reported in **(2008) 17 SCC 448**, the Hon'ble Apex

Court held as follows:-

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “*interest reipublicae ut sit finis litium*”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing timelimit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

In the case of ***Basawaraj v. Land Acquisition Officer***, reported in **(2013) 14 SCC 81**, it was observed and held by the Apex Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It was observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It was further observed that even though limitation may harshly affect rights of a party, but it has to be applied with all its rigour when prescribed by statute. The Apex Court held that in case a party had acted with negligence, lack of bona fides or there was inaction, then there could not be any justifiable

ground to condone the delay, even by imposing conditions. It was observed that each application for condonation of delay had to be decided within the framework laid down by the Court. It was held that if courts start condoning delay where no sufficient cause is made out by imposing conditions, then that would amount to violation of statutory principles and showing utter disregard to the legislature.

In the case of ***Pundlik Jalam Patil (supra)***, it was observed by the Apex Court that courts could not enquire into belated and stale claims on the ground of equity. Delay defeated equity. The Courts should help those who were vigilant and “did not slumber over their rights”.

The revisional application is thus dismissed.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)