

June 6, 2023
Sl. No.A 20
Court No.19
s.biswas

CO 1207 of 2023

Motilal Chopra and another
vs.
Anup Kumar Chopra and others

Mr. Sattik Rout
Mr. Shounak Mukhopadhyay
Mr. Sayantan Bose

... for the petitioners

The petitioners are the defendants in a suit for declaration and permanent injunction being Title Suit No.98 of 2008.

The petitioners are aggrieved by an order dated March 3, 2023 passed in Title Appeal No. 56 of 2015 by the learned District Judge, Purulia. By the order impugned, the delay of 552 days in preferring the aforementioned title appeal by the plaintiff, had been condoned.

Learned advocate for the defendants/petitioners alleges that when the learned lower appellate court had come to the conclusion that the allegation against the trial judge of having antedated the judgment was unfounded, the delay in filing the appeal ought not to have been condoned. Only to render complete justice to the parties, condonation of delay is not permissible.

Reliance has been placed on the decision of the Hon'ble Apex Court in the matter of ***Lingeswaran Etc. vs. Thirunagalingam*** reported in 2022

LiveLaw (SC) 227 being Special Leave to Appeal (C) Nos.2054-2055/2022 dated February 25, 2022.

In the said judgment, the Hon'ble Apex Court held that once the learned trial court had come to the finding that the delay had not been explained, the matter should rest there and the application for condonation of delay should be dismissed. Only on the ground that a particular fair trial should be given to the parties, and application for condonation of delay should not be allowed.

In the order impugned, the learned lower appellate court opined that the allegation made by the opposite parties against the learned trial judge that the decree had been antedated and the actual judgment was delivered long after the date mentioned thereon, was not accepted.

However, there is no finding of the learned court that the delay had not been sufficiently explained. The learned lower appellate court allowed the application for condonation of delay on the ground that a technical detection as to whether the delay had been sufficiently explained, would cause injustice. The application for condonation of delay was pending before the learned lower appellate court for eight years before the same could be taken up. The appeal and the application for condonation of delay were filed on September 7, 2015.

Unfortunately, up to March 3, 2023, the said application could not be heard. This, itself, amounts to injustice to a litigant, if the business of a court did not permit the litigant to get his matter heard out within a reasonable time.

Moreover, condonation of delay is a discretionary order. This Court has perused the application for condonation of delay and finds that the opposite parties had provided sufficient explanation for the delay in filing the appeal.

It appears that the clerk of the learned advocate for the opposite parties was not aware that the judgment had been delivered until November 18, 2014. The opposite parties were informed up to the first week of November, 2014 that no judgment had been delivered, although the suit was finally heard on January 3, 2014. Only on November 18, 2014, the clerk of the learned advocate for the opposite parties came to know that the judgment had been delivered on January 4, 2014. Immediately, the clerk of the learned advocate informed the plaintiffs/opposite parties and the learned advocate applied for the certified copy of the judgment. At the relevant point of time, the plaintiff/opposite parties were in Punjab on business. The plaintiffs returned to Purulia on August 30, 2015 and thereafter met

their learned advocate. The appeal was preferred on September 7, 2015.

Learned lower appellate court instead of making an enquiry and/or investigation with regard to the allegation of the judgment not having been delivered on January 4, 2014, but was antedated, exercise his discretion and took a liberal view, there condoning the delay.

The law is well-settled that each day's delay is not required to be explained. Reference is made to the decision of ***Collector (LA), Anantnag and Anr.***

v. Mst Katiji and Ors., reported in ***(1987) 2 SCC***

107, the Hon'ble Apex Court held as follows:-

“3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". **The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice** — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that

can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

In the decision of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy***, reported in **(2013)**

12 SCC 649, the Hon,ble Apex Court held as follows:-

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

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

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

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

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) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

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.

22.1. (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.”

In the decision of **Ram Nath Sao v. Gobardhan Sao**, reported in **(2002) 3 SCC 195**, while discussing the decision in **N. Balakrishnan vs. M. Krishnamurthy** reported in **(1998) 7 SCC 123** discussed the principles relating to condonation of delay in paragraph 10 of the decision which is quoted below:-

“10. ***

8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

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 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. The Court further observed in paragraphs 11, 12 and 13 which run thus : (SCC pp. 127-28)

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] .

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.”

Even assuming that the judgment was delivered on January 4, 2014 and taking the allegation against the learned trial judge to be incorrect, it appears that the plaintiffs had entrusted their learned advocate to conduct the proceedings and take care of the developments. The clerk of the learned advocate was not aware as to whether the judgment had been delivered or not, until November 18, 2014. Thereafter he applied for the certified copy. The certified copy was made available on December 16, 2014, when the plaintiffs/opposite parties were away on business at

Punjab for about nine months and hence only after they returned to Purulia, they were made aware of that the contents of the judgment. Thereafter, the opposite parties consulted with the learned advocate and decided to prefer the appeal. The explanations in paragraph nos. 3 to 6 of the application for condonation of delay are sufficient.

The revisional court can always supply reasons justifying the order of the learned lower appellate court. The court did not err in allowing the delay, although the reasons given by the said court may not be very satisfactory. However, if the final decision is correct, the revisional court should not upset the said decision but uphold the same by supplying better reasons.

The revisional application is dismissed without any interference. The learned lower appellate court is directed to dispose of the Title Appeal No.56 of 2015 within a period of six months from the date of communication of this order.

All the parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)