

Item No. 20
21.06.2023
Court. No. 19
GB

C.O. 1773 of 2023

Manik Hazra
Vs.
Sumita Dey & Ors.

*Mr. Pratip Mukherjee,
Mr. Samrat Chowdhury,
Ms. Sanhita Shao*

...for the Petitioner.

Supplementary affidavit filed in Court is taken on record.

It is an admitted position that the proceedings involved in this revisional application was governed by the Consumer Protection Act, 1986. The petitioner is aggrieved by an order dated May 2, 2023 passed by the learned State Commission rejecting an application under Section 5 of the Limitation Act for condonation of delay in filing the First Appeal No.A/114/2023. The appeal was filed in connection with an order passed in CC/509/2018. The learned tribunal upon going into the explanation of the delay of 1290 days in filing of the appeal, rejected the said application. Hence, the appeal was not registered.

The learned advocate for the petitioner challenges the said order under Article 227 of the Constitution of India on the following grounds:-

- a) The learned court proceeded as if the proceedings were under the 2019 Act.

- b) The grounds pleaded in the application under Section 5 of the Limitation Act were not considered.
- c) The merits of the appeal ought to have been adjudicated before rejecting the application for condonation of delay.
- d) The fact that the summons were not served upon the correct address and the petitioner came to know about the alleged proceeding only when the Commissioner went to the house of the petitioner to serve the notice belatedly, was not taken into consideration.

It appears from the order impugned that the learned Commission assessed the facts, the laws, the decisions of the Hon'ble Apex Court and found that the delay of 1290 days could not be condoned. The relevant paragraphs of the order are quoted below:-

“From the aforesaid dicta of the Hon'ble Apex Court and the Hon'ble National Commission it is clear that 'sufficient cause' means that the parties should not have acted in a negligent manner or there was a want of bona fide on its part and applicant must satisfy the Court that he was prevented by any sufficient cause from prosecuting his case unless a satisfactory explanation is furnished. The Court should not allow the application for condonation of delay.

9. Reverting to the material available before us, para nos. 12 & 13 of the application for condonation of delay is the explanation given by the appellant for the delay caused in filing this appeal. It is clear that the impugned order was passed on 02.08.2019 and the appeal was supposed to be filed by 17.09.2019 i.e. within 45 days from the date of the impugned order. The appellant filed the

present appeal on 31.03.2023 which is after the delay of 1290 days.

10. Therefore, the appellant shall have to explain the delay for the period from 17.09.2019 to 31.03.2023.

11. The appellant has taken plea that the appellant was totally bedridden due to serious ailment to communicate with the Advocate to have proper advice. The appellant was totally dependent upon the Advocate and was totally ignorant about the procedure of the Consumer Court. There was no intentional latches (Sic) on the part of the applicant. The appellant has also taken another plea that the appellant is a senior citizen and undergoing treatment for medical complications namely C2-C6 Ossified Posterior Longitudinal Ligament since 2014 and has undergone surgery in the Christian Medical College, Vellore and had since been bedridden and is still undergoing treatment. As such, the appellant was unable to file the appeal in time.

12. On perusal of the record it appears to us that the appellant has not denied on oath that he has not received the notice in connection with Consumer Case No. CC/509/2018 and E.A. No. 190/2019. Rather the appellant has clearly and categorically stated in the application for condonation of delay that the notice of Consumer Case No. CC/509/2018 and Execution Case No. EA/190/2019 was duly served at S.P. No. 153 at premises No. 23/A Sahapur Road, Sahapur Colony, P.S. New Alipore, Kolkata-700 053.

13. Learned Lawyer appearing for the appellant has submitted that the appellant was a senior citizen and undergoing treatment for a medical complication, as such, he has failed to file the appeal in time. We find that the said submission of the appellant is nothing but an attempt to mislead the Court. So, the application filed by the appellant seeking condonation of delay is without any merit.

14. In view of the above we find no sufficient ground to condone the inordinate delay of 1290 days. The present appeal is nothing but an abuse of process of law.

15. The application for condonation of delay is accordingly dismissed.

16. Accordingly, the appeal is dismissed being barred by limitation.”

In the view of this Court, the learned Commission has looked into the pleadings, applied the facts and laws and has come to a decision that the application for condonation of delay did not sufficiently explain as to how 1290 days has been consumed. Thus, the application was dismissed and the appeal was found to be an abuse of the process of court.

Mr. Mukherjee, learned advocate appearing on behalf the petitioner submits that when an order is perverse and ex facie wrong, the revisional court in exercise of inherent power under Article 227 of the Constitution of India can correct such a wrong. Reliance has been placed on two decisions of this Court in the matter of ***Sri Samir Dutta versus Smt. Mamata Das & Anr.*** passed in ***C.O. No.2602 of 2017*** and in the matter of ***Mantulal Acharya @ Mangtoo Lal Acharya versus Prasun Adhikari & Ors.*** passed in ***C.O.242 of 2023***.

It is submitted that the averments in the application for condonation of delay were neither considered nor looked into properly by the Commission, while passing the aforementioned order. The fact that the petitioner was unaware of the proceeding till the commissioner went to serve the notice, was not considered at all.

Having perused the order of the learned Commission, it appears that the Commission has assessed the entire facts and the pleadings and passed the necessary order. Correction of an error or a mistake in the order passed by a subordinate forum, has to be done upon detection of material irregularity. Under Article 227 of the Constitution of India, the revisional

court can only interfere when the order is perverse, (a) the order is based on non-consideration of the material evidence (b) the order is based on extraneous consideration or the incorrect law or (c) wholly without jurisdiction.

In this case, the learned Commission dealt with the pleadings and the submissions made on behalf of the petitioner and came to the conclusion that the delay of 1290 days, should not be condoned. There was lack of due diligence. Commission found laches and negligence on the part of the petitioner.

The argument of Mr. Mukherjee is based on the fact that the learned Commission had passed a wrong order on facts and law. Learned Advocate seeks interference by exercise of general power of superintendence. In this case, the entire merits of the application has been decided upon application of the law as per the understanding of the Commission. This order cannot be said to be perverse. Rules of limitation are not meant to destroy the substantive right of parties. They exist to ensure parties do not resort to dilatory tactics.

In the case of ***Ramlal v. Rewa Coalfields Ltd.***, reported in **(1962) 2 SCR 762**, the Hon'ble Apex Court observed and held as under:

“7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge.

and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan [(1890) ILR 13 Mad 269] “Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words ‘sufficient cause’ receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant.”

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 this 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”.

Hence, where the Commission did not find sufficient cause to condone the delay and held that the appeal was filed to abuse the process of Court, this Court does not find any good reason to interfere with the order impugned.

Now reverting to the decisions passed by the coordinate Bench, the ratio in matter of Samir Dutta (*supra*), is not applicable to this case. The learned coordinate Bench found jurisdictional error on the part of the District Commission and the State Commission, when the said fora had entertained a prayer for performance of an unlawful agreement. The order was wholly without jurisdiction and set aside. In the present case, the facts are completely different. The State Commission as the authority empowered by law to decide the appeal along with the application for condonation of delay rejected the application for condonation of delay upon appreciation of the facts, the laws and the pleadings.

The decision of the coordinate Bench in the matter of Mantulal Acharya (*supra*) shall not be applicable in this case as the coordinate Bench found that the Commission had rejected the appeal by considering the nomenclature and not the contents of the memorandum of appeal. Thus, the matter was remanded to the Commission for hearing of the appeal. The facts in this case do not fit in to the facts of Mantulal Acharya (*supra*).

It is settled that a ratio will be binding only when the facts are similar. When the facts are distinguishable and different, the decision would not be a binding precedent. The

facts of this case, do not fit into the cases referred by learned counsel.

In Union of India and others vs. Dhanwanti Devi and others reported in **(1996) 6 SCC 44**, the Hon'ble Apex Court held as follows:

"Before advertent to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Kishan Khosla's case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and per se per incuriam. It is not everything said by a Judge who giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contains three basic postulates - [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

In *Quinn v. Leathern* (1901) AC 495 (H.L.), *EARL OF HALSBURY LC* it was observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context.

Words of LORD DENNING, in the matter of applying precedents, have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. One should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

.. . .

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

The petitioner is at liberty to approach the National Commission, if permissible by law. The petitioner is entitled to take back the certified copy of the order impugned, upon furnishing a photocopy thereof.

Accordingly, the revisional application is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)