

27.07.2023
Item No. 30
Ct. No. 236

S.A.T. 253 of 2022
CAN 1 of 2022

In the matter of: Kuddus Ali Midda & Anr.

Mr. A. Khan	
Mr. Pronojit Roy	... for the Appellants
Mr. Ranjan Kali	... for opposite party

This is an application for condonation of delay of 4 years and 348 days in preferring the appeal. It is contended that being aggrieved by and dissatisfied with the judgement and decree passed in Title Appeal No. 69 of 2010, the petitioners decided to challenge the said judgement and for that purpose Sri Pijush Kanti Hajra, Advocate was entrusted who instead of filing an appeal, filed a petition under Article 227 of the Constitution of India, registered as CO No. 543 of 2018 on 13th of February 2018. The said application being CO No. 543 of 2018 was dismissed for default on 6th of September 2018 and on 4th of November 2022 the petition was restored to its original file. On 10th of November 2022 the application being CO No. 543 of 2018 was taken up by the court for hearing it was found to be not maintainable. The revisional application was dismissed as withdrawn with liberty to the petitioner to take back the certified copy from the record. It is further contended that the petitioner could not take any steps till 2nd of December 2022 due to the illness of Mr. Hajra learned counsel. On 2nd of December 2022 Mr. Subrata Mukherjee, learned advocate took the

certified copy back from the Department and filed the apple on 5th of December 2022. It is contended that the petitioners were not negligent in any manner whatsoever and the delay was not wilful. Wrong advise of the learned advocate, who was engaged by the petitioners in time, led the petitioners to pursue the revisional application in quest of justice.

Opposing the prayer for condonation of delay the opposite parties by filing written objection stated that the delay was intentional. The conduct of the petitioners would show that there was a lack of due diligence. After the petition under article 227 of the Constitution of India was filed on 13th of February 2018, it was not pursued with sincerity which is why Hon'ble Justice Dipankar Dutta was pleased to dismiss the application for default on 6th of September 2018. The petitioners took more than 4 years to get the application under article 227 of the Constitution of India restored to its original file. Even after the restoration of the application when the petitioners were granted leave to take back the certified copy from the record it took more than a month for the petitioners to act. There was further delay in preferring the apple. It is contended that the application is authority misconceived, harassive, vindictive and bereft of proper explanation.

Mr. A. Khan, learned Counsel for the petitioners submits that petitioners are ignorant about the procedure of law. They took the service of an advocate, followed his advice and the petition under article 227 of the Constitution of India

was filed. Therefore, petitioners may not be made to suffer for not filing an appeal in time. The petitioners wanted to challenge the judgement passed in title appeal No. 69 of 2010 and within time they approached the court which indicates their bona fide intention. They had to depend on an expert in the field and had to follow the advise of such expert and ultimately after more than 4 years it could be detected that wrong forum was chosen by the learned lawyer, engaged by the petitioners. Therefore the period spent to pursue the revisional application commencing from 13th of February 2018 to 11th of November 2022 may be excluded under section 14 of the Limitation Act.

Refuting such contention Mr. Kali, learned Counsel for the opposite party submits that the petitioners were never sincere in pursuing their cause. The application under article 227 of the Constitution of India was dismissed for default and it was restored nearly after close to 5 years. There is no explanation why they did not take any step to get the revisional application restored within reasonable time. The conduct of the petitioners according to Mr. Kali, demonstrates their malafide intention to harass the opposite party. They were manifestly negligent in pursuing the application, filed under Article 227 of the Constitution. Mr. Kali further submits that inaction on the part of the petitioners was intentional. Since a substantial right has been accrued to the opposite parties, this court may not

exercise the discretion in favour of the petitioners to condone the mammoth delay of 4 years 348 days.

Section 14 of the Limitation Act reads as follows :-

“14.Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order 23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

Hon’ble Supreme Court in *Consolidated ENGG. Enterprises vs. Irrigation Deptt.* reported in **(2008) 7 SCC 169**, held as follows :- (SCC p. 181)

“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and

(5) Both the proceedings are in a court.”

The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in

mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act, 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (*sic*) of law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

In ***M.P. Steel Corpn. vs. CCE*** reported in **(2015) 7 SCC 58**, Hon'ble Supreme Court held:-

“49. The language of Section 14, construed in the light of the object for which the provision has been made,

lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant-appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under Explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months

are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety-first day till the final appeal is ultimately dismissed. This example also goes to show that the expression “the time during which the plaintiff has been prosecuting with due diligence another civil proceeding” needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.”

In ***Bhivchandra Shankar More vs. Balu Gangaram More & Ors.*** reported in **(2019) 6 SCC 387** it is held by Hon’ble Apex Court:-

“15. It is a fairly well settled law that “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bonafide could be imputable to the appellant. After referring to various judgments, in B. Madhuri, this Court held as under:-

“6. The expression “sufficient cause” used in [Section 5](#) of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach need to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.”

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123, this Court held as under:-

“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.”

It goes without saying that while deciding an application for condonation of delay, Court should not take any pedantic view, rather there should be liberal and pragmatic approach. But at the same time lack of bonafide cannot be lost sight of and concept of reasonableness cannot be ignored while taking such liberal approach. After all Court

is to take the call keeping in mind not only the interest of the petitioners/appellants but Court also has to remain alive to the fact that the inaction on the part of the petitioners to prefer appeal in time has conferred right upon the opposite parties under the law. Therefore, Court needs to strike a balance, taking into consideration the facts of the case.

Therefore while considering the prayer for condonation of delay in the light of Section 14 of the Limitation Act, 1963, court should look for two ingredients -due diligence and good faith in prosecuting the case in a court which are defect of jurisdiction or other cause of like nature cannot entertain the same. In this case, on explained in action of the petitioners for more than 4 years undoubtedly speaks volume about lack of due diligence.

Section 5 of the Limitation Act is a beneficial legislation. Therefore the discretion to condone the delay cannot be exercised mechanically. This court is of the considered opinion that there is no reason to take away the right accrued to the opposite parties in the wake of the inaction on the part of the petitioner, by condoning the delay, as prayed for. The petition is rejected, however, without cost.

Can 1 of 2022 is thus disposed of.

(Siddhartha Roy Chowdhury, J.)