

21.08.2023  
Sl. No.6(DL)  
srm

**C.O. No. 3857 of 2022**  
**Rafikul Alam Mullick & Ors.**  
**Versus**  
**Sk. Abbas Ali & Ors.**

Mr. Purnendu Das,  
Mr. Meghanil Manna,  
Mr. Kaustav Seal

...for the Petitioners.

This revisional application arises out of an order dated September 22, 2022 passed by the learned Additional District Judge, 2<sup>nd</sup> Court at Serampore, Hooghly, in Title Appeal No.13 of 2021.

By the order impugned, the learned court below rejected an application under Section 5 of the Limitation Act refusing to condone the delay of 912 days in filing the title appeal. The learned lower appellate court found that the petitioners had made a false statement on oath. The explanation for the delay was that the petitioners came to know about the dismissal of the suit in the month of June, 2019. Thereafter they applied for certified copy of the judgment and decree on July 15, 2019 and obtained the certified copy on July 19, 2019.

The learned court found that the certified copy of the *ex parte* decree passed in Title Suit No.191 of 1992 which was filed

before the court with the memorandum of appeal indicated that the application for certified copy of the decree was made on April 9, 2018. The certified copy was made ready for delivery on April 10, 2018 and it was delivered on April 11, 2018.

So the contentions of the petitioners before the learned lower appellate court with regard to the date of knowledge of dismissal of the suit as June, 2019 was false and unsustainable. The court did not find any materials on record in support such incorrect statement. It has been held that the petitioners did not have any regard for the truth. Even if the contentions of the petitioners were assumed to be correct with regard to the delivery of the certified copy on July 17, 2019, as stated in the application under Section 5 of the Limitation Act and handing over of the same to the learned Advocate on July 25, 2019, the appeal was still filed after one year three months from such date, namely on October 15, 2020. There was still no explanation with regard to what transpired between July 25, 2019 and October 15, 2020.

The learned lower appellate court upon considering all the relevant guidelines of the Hon'ble Apex Court held that in the absence of sufficient explanation for the delay, as the delay was not properly and convincingly explained, the appeal could not be registered on sympathetic grounds, alone.

Negligence, inaction, lack of *bona fide* could not be condoned. The court found that not only was the explanation inadequate and unsatisfactory, but there was suppression of facts. The petitioners approached the court with unclean hands, which itself, was a good ground for rejection of the application.

The learned Advocate for the petitioners submits that the petitioners could not be blamed for the delay as they were minors when the suit was dismissed *ex parte*. They came to know about such dismissal in June, 2019 and thereafter they applied for the certified copy and approached the learned Advocate on July 25, 2019. This was the ground for delay in filing of the appeal.

First and foremost, the person who has affirmed the affidavit, namely, the petitioner No.2 is 38 years old. Such contention of the learned Advocate for the petitioners that the petitioners were all minors when the suit was dismissed, is not correct. The suit was filed on behalf of the minors, but during the pendency of the suit the petitioners had all attained majority.

Next, it does not appear from the explanation under Section 5 of the Limitation Act, that the issue of minority had ever been pleaded. The explanation was that the appellants acquired knowledge of dismissal of the suit in June, 2019. They applied for certified copy on July 15, 2019, which was

delivered on July 18, 2019, they handed over the same to the learned Advocate on July 25, 2019 and the appeal was filed in October 2020. These submissions have been found to be incorrect and false as the certified copy annexed to the memorandum of appeal indicated that the certified copy was applied for on April 9, 2018, made ready for delivery on April 10, 2018 and delivered on April 11, 2018. Moreover, even if the certified copy was supplied to the Advocate on July 25, 2019 there was still no explanation as to why more than one year three months was wasted and the appeal was filed only on October 15, 2020.

The law of limitation was based on public policy. The law of limitations were meant to ensure that parties do not resort to dilatory tactics, but seek their remedy promptly. Once a valuable right had accrued in favour of the other party, the delay should be sufficiently explained. In this case, not only has the delay not been explained, but the explanations have been found to be false and such false statements have been made on oath before the learned lower appellate court.

This Court does not find any reason to interfere with the order impugned for the following reasons:

- (a) The learned lower appellate court, upon appreciation of the facts and materials on record found that false statements were made by the petitioners.

- (b) The learned lower appellate court found that the application for condonation of delay suffered from misrepresentation and suppression of facts.
- (c) The learned lower appellate court found that the petitioners did not approach the court for condonation of the delay, with clean hands. There was no explanation at all as to why the appeal was filed on October 15, 2020, that too, after one year three months from the alleged date on which the petitioners handed over the certified copy to the learned Advocate. Although, the certified copy annexed to the memorandum of appeal indicated that the same was handed over and delivered on April 11, 2018.

All the statements made by the petitioners have been found to be untrue. The petitioners have not been able to show any cogent reason as to why superintending power of this court should be invoked. The order impugned is well reasoned and based on proper appreciation of the records and materials before it. The relevant provisions of law have also been considered. A litigant who does not come to court with clean hands and makes false statements, is not entitled to any equitable or discretionary relief.

In *Shri K. Jayaram and Ors. vs. Bangalore Development Authority and Ors.* decided in *Civil Appeal No. 7550-7553 of 2021*, The Hon'ble Apex Court held as follows:-

"17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief."

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 fide is attributed to the party. It was 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 fide 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 was made out by imposing conditions, then that would amount to violation of statutory principles and showing utter disregard to the legislature.

The revisional application is, thus, dismissed.

There shall be no order as to costs.

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

**(Shampa Sarkar, J.)**