

11.06.2024  
TUESDAY

Court : 08  
Item : DL-01  
Matter : FMAT  
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Bench ID : 266048  
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IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

FMAT 52 of 2024  
with  
CAN 1 of 2024  
CAN 2 of 2024

Saroj Saha & Ors.  
Vs.  
Lalan Prasad Gupta & Ors.

Ms. Shila Sarkar., Advocate  
Mr. Sibasis Ghosh, Advocate  
Mr. Souvik Das, Advocate

..... for the Appellant

Mr. Md. Salahuddin, Advocate  
Mr. Md. Zamiul Alam, Advocate  
Mr. Md. Raziuddin, Advocate

.....for the Respondents

CAN 1 of 2024

1. Though there is an inordinate delay in filing an application for condonation of delay but that itself cannot act as a deterrent in exercise of the discretion conferred upon the Court provided the Court finds the explanation within the ambit of a sufficient cause under Section 5 of the Limitation Act.
2. The judgment of the Apex Court rendered in *Pathapati Subba Reddy (died) Vs. The Special Deputy Collector (LA) [Special Leave Petition (Civil) No. 31248 of 2018]* decided on April 8, 2024, as relied upon by the learned Advocate for the respondents, does not in an unequivocal terms held that the Court denuded of its power to condone the inordinate delay under any circumstances.

3. The Apex Court has taken note of the provisions contained under Section 3 of the Limitation vis-à-vis Section 5 thereof and held that the Court must bear in its mind while dealing with an application for condonation of delay that Section 3 stands as an obstacle in seeking a relief beyond the period of limitation provided therefor. It does not take away the discretionary powers conferred upon the Court under Section 5 of the Limitation Act but while exercising such discretion the Court must be cautious while ascertaining whether there is any negligence or want of due diligence which can be attributed to the conduct of the person. Reliance was heavily placed on paragraph 32 of the said judgment to buttress the submission that the claimants have suffered an order on contest and could have applied for a procedural review and having not done so, there is apparent want of due diligence on their part in pursuing the matter. Such observation was made in the context of the facts involved in the said case and cannot be culled out as a ratio of the said judgment. However, the Apex Court has succinctly laid down the law relating to condonation of delay in paragraph 26 of the said report which is reproduced as under:-

*"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*

- (iii) *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) *Merits of the case are not required to be considered in condoning the delay; and*
- (viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."*

4. It is thus manifest from the afore-mentioned observations that the Court while exercising its discretion in condoning the delay should bear in mind the provisions contained under Section 3 of the Limitation Act and in the event, it is found that the applicant was negligent and not diligent enough to pursue the remedy, the Court even by adopting a liberal approach, should refuse to condone the delay. What is *sine qua non* in exercise of the discretion under Section 5 of the Limitation Act is that if the applicant is found negligent and there is an apparent carelessness and/or want of due diligence, the Court shall refuse to condone the delay. That itself cannot be construed when the Court found the conduct to be such which impeded the said applicant to approach the Court within the period of limitation, there is no fetter on the part of the

Court to condone the delay.

5. In the instant case, it is averred in the said application that though the order of temporary injunction was passed on 19.02.2022 but because of the catastrophic effect of the pandemic and the sense of fear having generated amongst the people of the globe, steps could not be taken. It is further averred that the appellant being septuagenarian was also suffering financial stringency because of the 'COVID' having struck globally and could not approach the lawyer for taking an appropriate remedy before the Court of law. Obviously, the pandemic has struck the pace of the life both physically as well as economically and, therefore, a person who was prevented from approaching the lawyer cannot be said to be unreasonable taking into account the realities which every citizenry faced during such period.
6. Even in case of ***Basawraj & Anr. Vs. The Special Land Acquisition Officer*** reported in ***(2013) 14 SCC 81***, the Apex Court has held that if the Court finds the explanation to be sufficient, adequate and just, preventing the litigant to approach the Court within the period of limitation, there is no embargo on the part of the Court to exercise the discretion in condoning the delay irrespective of the length of delay. It is no doubt true that while harmonizing the provisions contained under Sections 3 and 5 of the Limitation Act, the Court must bear in its mind the stringent provisions contained under Section 3 of the said Act while

exercising the discretion under Section 5 thereof.

7. The entire gamut of the decision leads to an inescapable conclusion that in the event, the Court finds the explanation to be sufficient enough for the purpose of Section 5 of the Limitation Act, there is no hurdle on the part of the Court to exercise such discretion which should be judicious and in just manner as opposed to capricious and the arbitrary exercise of such discretion.
8. As indicated above, the explanation offered in the application as well as the supplementary affidavit cannot be termed as an insufficient explanation or negligence can be attributed to the conduct of the appellant and, therefore, there is no fetter on the part of the Court to condone the delay irrespective of the fact that the delay is inordinate.
9. The application for condonation of delay being **CAN 1 of 2024** is thus **allowed**.
10. The delay in filing the instant appeal is hereby condoned.

**FMAT 52 of 2024**

11. We have seen the impugned order by which the learned Judge in the Trial Court proceeded to make the *ad interim* order of injunction absolute and directing the parties to maintain *status quo* till the disposal of the said suit.
12. The respondents filed the suit for partition and separation of shares in respect of the properties described in the schedule appended to the said plaint. An application for temporary injunction is

taken out in the said suit to the effect that the defendants are disturbing the peaceful possession of the plaintiff in respect of the suit property and, therefore, they should be restrained in achieving such sinister objective.

13. By an order dated 10.09.2021, an *ex parte ad interim* order of injunction was passed directing the parties to maintain *status quo* in respect of the suit property. It is manifest from the record that the appellants appeared and filed the written-objection to an application for temporary injunction on 08.10.2021 and thereafter by the impugned order, the Court recorded the following:-

*"Both parties filed hazira.*

*The case is taken up for hearing petition dated 09.09.21 U/O 39 r.1 and 2 r/w 151 CPC praying for temporary injunction.*

*Hd.*

*Perused the C.R. and the petition dated 09.09.21 U/O 39 r.1 and 2 r/w 151 CPC filed by the plaintiff and the papers and documents filed by the parties.*

*Considering the case and submission of both sides, materials on record, prima facie case, balance of convenience and inconvenience of the parties I think the petition dated 09.09.21 U/O 39 r.1 and 2 r/w 151 should be disposed off with a direction upon both sides to maintain status quo till the disposal of the suit.*

*Hence it is,*

*Ordered*

*that the petition dated 09.09.21 U/O 39 r.1 and 2 r/w 151 CPC is hereby disposed off on contest with a direction upon both sides to maintain status quo till the disposal of this suit.*

*Fix 17.03.22 for W.S and S/R."*

14. It is apparent from the aforesaid findings

recorded in the impugned order that there is no discussion on existence of a *prima facie* case, balance of convenience or inconvenience and irreparable loss and injury likely to be suffered by the plaintiffs/respondents. The Court has mechanically proceeded to make the *ex parte ad interim* order of injunction absolute without recording any findings or the reasons in support of the same.

15. It has been highlighted by the Apex Court in catena of decisions that the Court while passing an order of temporary injunction must record reasons. The reason is the heart and soul of an order without which it cannot survive. It is a foremost duty of the Court to record reasons in dispensation of the justice as the party who suffers the order, has a right to know the reasons. It would further assist the Appellate Court to understand the process and the mindset of the Judge behind the ultimate decision taken by it and in the event, it is found that a discretion has been exercised in a judicious manner, the Appellate Court should be slow and circumspect in interfering with such discretionary order. In absence of any reason recorded in the impugned order, it is very difficult for the Appellate Court to find any justification in the ultimate decision. It is, in such context, held that the reasons are inevitable exercise of powers and the Court must record reasons before taking any decision in an adversarial litigation.

16. Since the order impugned is bereft of any reason

as the Trial Court has not recorded its satisfaction on the three golden parameters required for disposal of an application for temporary injunction, the order needs interference.

17. It is sought to be argued by the respondents that the order of *status quo* in a partition suit is an ordinary phenomenon and normally passed by the Court.
18. We are unable to comprehend such proposition of law as the Court is required to return its findings and record its reason on the parameters of law laid down for the purpose of temporary injunction. Furthermore, the partition suit has a unique feature as there is no concept of plaintiff and defendant therein as commonly understood in case of a ordinary civil litigation. Every co-sharer is not only defending his share in the joint property but also asserting his right therein which make the partition suit distinguished from the ordinary civil litigation. Passing an order of *status quo* on the pretext that there is an alleged interference in the possession, the Court must be more cautious and careful as an unscrupulous litigant may misuse and abuse the order of *status quo* which is ambiguous unless there is clarity in the reasons underlying the passing of such *status quo* order.
19. It is moreso when the possession is disputed. The Court before embark its journey on the peripheral of the *status quo* order, must record the possession of the plaintiff with clarity and

lucidity. Blanket order of *status quo* should be eschewed unless there is a competing circumstances warranting such order but in such situation as well, the Court must record the precise reason in relation to its operation during the pendency of the suit.

20. Since the **order impugned** is devoid of any reason, the same is hereby **set aside**.
21. The application for temporary injunction is directed to be re-heard by the Trial Court and it goes without saying that the Trial Court shall dispose of the said application upon recording proper reasons.
22. Since we have not entered into the merit of the respective stands taken by the parties, none of the observations shall be construed to have any persuasive impact thereupon and the learned Judge is free to take a decision on the merit of the case bearing in mind the nuances of law applicable in relation to a temporary injunction.
23. With these observations, the appeal being **FMAT 52 of 2024** and the application being **CAN 2 of 2024** are **disposed of**.

**(Harish Tandon, J.)**

**(Prasenjit Biswas, J)**

