

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

R.V.W. No. 3 Of 2022

With

CAN 1 of 2022

In

W.P.S.T. No. 3 of 2021

Yousuf Rana And Ors.

-Versus-

The State of West Bengal And Ors.

For the Appellant : **Mr. Partha Pratim Roy,
Mr. Debasish Mukhopadhyay,**

For the State : **Mr. Hirak Barman,**

Delivered on : **19.07.2024**

Prasenjit Biswas, J:-

1. The instant review petition has been preferred at the behest of the petitioners causing delay in filing the same. The order was passed on 10th March, 2022 in connection with W.P.S.T. No. 3 of 2021. It is sated by the petitioners that after passing of order by this Court they came to realize that unless the said order is reviewed by this Court the same shall in effect be rendered infructuous. It is further stated by the petitioners that as they are residing in various locations in the North Bengal and as such the instant review application could not be filed within the stipulated period as enshrined in the Act.

2. At the time of hearing Mr. Partha Pratim Roy learned Counsel appearing on behalf of the petitioners submits that the present petitioners were prevented by the aforesaid reasons and could not file the instant review petition within the stipulated period and it has been filed after causing 15 days of delay. As per submission of the learned Counsel if the said period of delay is not condoned the petitioners will suffer irreparable loss and injury which cannot be compensated by any means. It is submitted by the learned Counsel that as there was no intentional latches or negligence on the part of the petitioners such delay may be condoned and the grounds so stated in the petition may be treated as sufficient cause for condoning the delay.

3. Mr. Hirak Barman learned Advocate appearing for the state raised objection against the submission advanced by the learned Counsel appeared on behalf of the petitioner. The submission so advanced on behalf of the petitioner was denied by the respondent state by stating that the appellants did not explain the period of delay in preferring this instant review petition and for such reason same may be dismissed outright.

4. We have anxiously considered the submission advanced by both the parties.

5. It is profitable to quote the observations made by the Hon'ble Apex Court in case of ***Lanka Venkateswarlu(Dead) by LRs. Vs State of Andhra Pradesh and Others*** reported in **(2011) 4 SCC 363**.

6. In the above referred case Hon'ble Court observed that the courts in the country, including the Supreme Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act. However, the concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay. Whilst considering application for condonation of delay under Section 5 of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies;

prejudices or predilections cannot and should not form the basis of exercising discretionary powers. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of the property. Justice must be done to both parties equally.

7. We are not unmindful that even after sufficient cause has been shown a party is not entitled to the condonation of delay as a matter of right. The proof of a sufficient cause is a condition precedent for exercise of the discretionary jurisdiction vested in the Court by Section 5. We are also of the opinion that if sufficient cause is not proved anything further has to be done and the application for condonation of delay has to be dismissed on that ground alone but if sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay.

8. So, we find that the words “sufficient cause” for not making the application within period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case and the type of the case. The words sufficient cause in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, an want of bona fides, deliberated inaction or negligence on

the part of the appellant. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay.

9. It is true that the legislature has conferred the power to condone the delay by enacting Section 5 of the Indian Limitation Act in order to enable the Court to do substantial justice to the parties by disposing of the matter on merit but it is also equally true that by taking advantage of the said provision one cannot be allowed to deprive the other side and frustrate the very purpose of disposal of such type of cases within the stipulated period. Appellants have failed to show the sufficient cause in not preferring the appeal within the stipulated period. The ground of delay of such long period in preferring the appeal, is not at all satisfactory and as such question of condonation of the same does not arise. This Court is not unmindful of the fact that an application U/s 5 of the Limitation Act is to be interpreted liberally but that does not amount that the petitioners will get walk over just by filing one application U/s 5 of the Limitation Act. The appellant has not explained the delay by submitting cogent reasons. The explanation is very vague in nature and made in a casual manner.

10. In this case, it is difficult to fathom any logic or rationale which can impel this court to condone the delay after holding the same to be justifiable. Thus, the application being CAN 1/2022 filed by the petitioners praying for condonation of delay in preferring this instant review petition does not survive for consideration and accordingly, it is dismissed.

11. Accordingly, the instant review petition filed by the petitioners is hereby dismissed as time barred and also sans merit.

12. There will be no order as to costs

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)