

Rajasthan High Court

Union Of India (Uoi) vs Brij Lal Prabhu Dayal And Ors. on 27 January, 1999

Equivalent citations: AIR 1999 Raj 216, 1999 (1) WLN 148

Author: A K Singh

Bench: A K Singh

JUDGMENT

Amaresh Ku. Singh, J.

1. Learned counsel for the appellant submits that he is not in a position to file the additional affidavit because the officer in-charge has not turned down. He prays for further time to file additional affidavit. Since no cogent reason for filing the additional affidavit has been shown, the prayer for further time is rejected.

2. Heard the learned counsel for the parties regarding the application filed by the learned counsel for the appellant under Section 5 of the Limitation Act.

3. In the present case, the appeal was filed after 83 days beyond the period prescribed for filing the appeal. The appellant has moved an application under Section 5 of the Limitation Act for condonation of delay and prayed that the delay in filing the appeal may be condoned. The application is contested by the respondents, who have filed reply to the application filed by the appellant.

4. Two grounds have been taken by the appellant in the application filed under Section 5 of the Limitation Act. First is that in the Court of learned Civil Judge (Sr. Division) Sriganaganagar, the appellant. Union of India was not duly represented. The second ground is that since the file was routed through a number of channels and Court Fee of Rs. 70,000/- had to be filed, as soon as the permission of the same was granted, the present appeal was filed before this Court.

5. Learned counsel for the respondents has submitted that the first ground raised by the learned counsel for the appellant is without any basis as the appellant Union of India was impleaded as defendant No. 3 and Shri Gauri Shankar Gupta, the Government advocate was representing the appellant in the lower Courts. A perusal of the certified copy of the impugned judgments dated 2nd April, 1998 passed by the learned Civil Judge (Sr. Division), Sriganaganagar shows that the appellant Union of India had been impleaded as defendant No. 3 and Shri Gauri Shankar Gupta, Government Advocate was representing the appellant. In view of this fact, which has not been controverted by any evidence, the first submission made by the learned counsel for the appellant that the Union of India was not duly represented before the lower Courts does not appear to be well founded. It deserves to be rejected.

6. The second ground for condonation of delay as urged by the learned counsel for the appellant is that the Court Fee of Rs. 70,000/- have to be filed and the file was to be routed through a number of channels and as soon as the permission was granted, the present appeal was prepared by the learned counsel for the appellant and presented before this Court. The learned Civil Judge (Sr. Division) Sriganaganagar passed the judgment under appeal on 2nd April, 1998. The appeal was filed in the Court by the appellant on 26th Sept. 1998 i.e. after five months and twenty four days from the date of the judgment. After taking into account the time for obtaining the certified copy of the judgment and period prescribed for filing of the appeal, there appears to be a delay of 83 days in filing the appeal. The appellant has not given the relevant dates on which the file was sent from one department to another nor given any reasons whatsoever to show the cause of delay. On 20th January, 1999, learned counsel for the appellant requested that time be given to him to file an additional affidavit and time was granted to him but no additional affidavit could be filed by the appellant as the in-charge did not taken steps to file the same.

7. Learned counsel for the appellant has in these circumstances relied on the general observations made in some judgments. In the case of Special Tehsildar Land Acquisition Kerala v. K.V. Ayisumma (1996)

10SCC634 : (AIR 1996 SC 2750), the Hon'ble Apex Court observed at page 2750-2751 of AIR;

"It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day to day delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in proceeding the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even inspite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen. None the less adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic."

8. In the case before the Hon'ble Apex Court, the admitted facts were that the reference Court made the award and decree on 31st May, 1989 and appeal filed on 27-7-1992 to review the award and decree. There was a delay in filing the application. The learned Subordinate Judge condoned the delay. Against the said order condoning the delay, the respondent had gone in revision to the High Court and the High Court in the impugned order set aside the orders of the Subordinate Court. Hence, by Special Leave, appeal was filed before the Hon'ble Apex Court. The facts clearly shows that there was delay in filing the review application before the learned Subordinate Judge and the delay was probably of a short duration and it had been condoned by the learned Subordinate Judge. The observations made by the Hon'ble Apex Court were made in the context of the facts of that case. So far as the general principles are concerned, there can be no dispute with the proposition that the approach of the Court should be pragmatic but not pedantic and the Court should also take care that the interested parties do not manipulate by causing delay in filing of the appeal and thereby serve their purposes.

9. The second case relied upon by the learned counsel for the appellant is State of Haryana v. Chandra Mani, AIR 1996 SC 1623. In this case, the Hon'ble Apex Court observed at page 1626-1627 :

"It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court be it by private party or the State-are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an evenhanded manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officer/agencies proverbially at slow pace and encumbered process of pushing the files from table and keeping it on table for considerable time causing delay-intentional or otherwise-is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and require adoption of pragmatic approach injustice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis a vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made

personally responsible for lapses if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

10. In that case there was 109 days delay in filing the appeal and the High Court refused to condone the delay. It further appears that reasons had been given for the delay in filing the appeal. So far as law is concerned, the law laid down by the Hon'ble Apex Court is binding on this Court. However, the question is that "whether the general principles pointed out by the Hon'ble Apex Court entitle the appellant in this case to get the delay condoned".

11. Learned counsel for the respondents has placed reliance on P.K. Ramchandra v. State of Kerala 1998 (7) JT SC 21 : (AIR 1998 SC 2276). In that case, there was a delay of 506 days in filing the appeal. The High Court condoned the delay. The Hon'ble Supreme Court observed at page 2277; of AIR:--

"It would be noticed from a perusal of the impugned order (supra) that the Court has not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is essential pre-requisite to condonation of delay.

That apart, we find that in the application filed by the respondent seeking condonation of delay, the thrust in explaining the delay after 12-5-1995, is; "at that time the Advocate General's office was fed up with so many arbitration matters, equally important to this case, were pending for consideration as per the directions of the Advocate General on 2-9-1995."

This can hardly be said to be a reasonable, satisfactory or even a proper explanation for seeking condonation of delay. In the reply filed to the application seeking condonation of delay by the appellant in the High Court, it is asserted that after the judgment and decree was pronounced by the learned Sub-Judge Kollan on 30-10-1993, the scope for filing of the appeal was examined by the District Government Pleader, Special Law Officer, Law Secretary and the Advocate General and in accordance with their opinion, was decided that there was no scope for filing the appeal, but later on, despite the opinion referred to above, the appeal was filed as late as on 18-1-1996 without disclosing why it was being filed, The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent State for condonation of inordinate delay of 565 days.

Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power prescribed, and the Courts have no power to extend the period of limitation on equitable grounds."

12. Another case which has been relied upon the learned counsel for the respondent is the decision given by the learned single Judge of this Court in S.B. Civil Misc. Appeal (Defect case) No. 1033/95 Union of India v. Hazari Ram decided on 27-11-1998. Learned counsel for the respondent has submitted that appeal in that case was arising from the same acquisition proceedings. There was 200 days delay and the application for condonation of delay was rejected by this Court.

13. So far as the general principles are concerned the real difficulty which arises before the Court in the matters of general principles is that general principles do not actually indicate their limits, with such a precision as may inform the Court whether to condone the delay or not to condone the delay. Consequently, if the general principles alone were sufficient no difficulty would have ever arisen. The difficulty in application of general principles can be removed if Legislature lays down the limits with such precision as to clearly

indicate whether a certain act is to be done or it is not to be done in a given set of circumstances. Whether the Legislature omits to do so, the Court may, if possible, point out with precision the limits, so as to indicate clearly whether to allow the application or not to allow the application. In cases where the Legislature does not point out the limits of the general principles nor the Court lays down any such limits as a declaration of law, it is judicial discretion which is to be exercised having regard to all the facts and circumstances and keeping in view the general principles which are applicable to both sides. The difficulty which arises in exercise of judicial discretion, which is required to be exercised in such cases, reminds of the age old question which, was indicated in "Hamlet" "to do or not to do is the question."

14. When the discretion can be decided in two ways i.e. either by allowing the application or by rejecting the same, the two orders which may be passed under the application are different. Both the orders cannot be guided by any one general principle for the simple reason that the difference between the two signifies a distance between them and this distance must be filled in either by discovery of something which should determine whether to pass one kind of order or the other, or, the principle which should guide the exercise of discretion by the Court.

15. Section 5 of the Limitation Act lays down one statutory principle, namely that if the act is not done within the period of limitation, it shall be deemed as barred by limitation, unless the delay is satisfactorily explained. In order the delay may be condoned, there must be "sufficient cause" and what may constitute a "sufficient cause" for condonation of delay, under Section 5 of the Limitation Act, has been considered by the Courts. It is the ascertainment of the "sufficient cause" for the purposes of condonation of delay that the Courts are advised to adopt the pragmatic approach, which means, keeping in view the hard realities of life and the functioning of corporated bodies.

16. On the other hand, while considering the question, whether there is a sufficient cause for condonation of delay the Court has to adopt a realistic approach keeping in view the realities of life and this is why the Courts are advised to adopt a pragmatic approach. But the general principles cannot be so liberally construed as to relieve the party, seeking condonation of delay, of showing that there was sufficient cause for delay.

17. In P.K. Ramchandra's case (supra), there was hardly any sufficient cause for condonation of delay and therefore, the Hon'ble Apex Court reversed the order passed by the High Court.

18. For the reasons mentioned above, I am of the opinion that Section 5 of the Limitation Act itself, adopts a pragmatic approach, inasmuch as it allows the condonation of delay if sufficient cause for delay is shown by party who fails to perform the act within the period prescribed by the statute. The condition for condonation of delay is the presence of a sufficient cause which prevented the party from doing the act in question within prescribed time. In other words, Section 5 of the Limitation Act insists on the presence of "sufficient cause" for the delay and, therefore, the party seeking condonation of delay must show that in fact there was a sufficient cause for the delay. If the party fails to show sufficient cause and relies merely on the general principles, for the purpose of condonation of delay, the Court may not find itself in a position to condon the delay for want of sufficient justification the reason being that the knowledge of the sufficient cause is available to the party which moves the application for condonation of delay. Such knowledge is not available to the Court. The Court must be informed about the cause for delay by giving relevant facts. The party cannot expect the Court will condone the delay without there being sufficient cause for it or to presume that there must have been some sufficient cause for delay. No such presumption is permissible under Section 114 of the Act. I am therefore, of the view that the party, seeking condonation of delay must place before the Court the relevant facts on the basis of which the Court may infer whether there was sufficient cause for delay. If the party which moves an application under Section 5 of the Limitation Act does not give facts to constitute "sufficient cause", the application would be liable to be rejected whether it is an application by a private person or by the State, the reason being that in the absence of the facts, the Court cannot draw the presumption that the delay in filing the appeal must necessarily have been occasioned by some undisclosed sufficient cause.

19. Where a party places before the Court sufficient facts to show that there was a sufficient cause for delay, the Court may adopt a pragmatic approach, taking into consideration the realities of life including the difficulties which were faced or were likely to have been faced by the party in doing the act in question and in appropriate ease, the Court may condone the delay on the basis that there was a sufficient reason for condonation of delay.

20. In the instant case, the appellant has not placed any facts before the Court. The statements that the appellant was not duly represented before the appellate Court does not appear to be well founded as it is clearly shown that Shri Gauri Sharma, Govt. Advocate was representing the appellant who was impleaded as defendant, No. 3. So far as the delay is concerned, no facts have been given and in the absence of facts, no presumption can be drawn that there must be a sufficient cause for not filing the appeal within prescribed time. It is the duty of the party to place the relevant facts that there was a sufficient cause for delay.

21. For the reasons mentioned above, I find no sufficient ground to condone the delay because no facts whatsoever have been given by the learned counsel for the appellant in its application under Section 5 of the Limitation Act to constitute sufficient cause within the meaning of Section 5 of the Limitation Act. The application filed under Section 5 of the Limitation Act for condonation of delay is hereby rejected and the appeal is dismissed as barred by the limitation.

22. Learned counsel for the appellant after dictating the judgment in the open Court prayed to the effect that execution proceedings in which the Defence department sought to be attached, or likely to cause embarrassment and therefore, the appellant may be given fifteen days time to take further action in this case. Having regard to all the facts and circumstances of the case, fifteen days time prayed for is granted to the appellant to take necessary steps in the execution proceedings.