AFR

Court No. - 2

Case :- CIVIL MISC REVIEW APPLICATION No. - 22 of 2022

Applicant :- Malhan And 17 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Madan Mohan Chaurasisa

Hon'ble Dr. Kaushal Jayendra Thaker,J.
Hon'ble Vivek Varma,J.

In re: Civil Misc. Delay Condonation Application No. Nil of 2022

1. This is an application filed under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the "Act, 1963") seeking condonation of delay in filing the review application, which is reported to have been filed with a delay of 1900 days i.e. about six years.

2. The review-applicants are co-share holders and they have preferred the instant review application under Section 114 of the Code of Civil Procedure, 1908 read with Chapter V Rule 12 of the Allahabad High Court Rules. The judgment under review was passed on 06.10.2016 in First Appeal Defective No. 817 of 2000 (Malhan v. State of U.P. and another). It is stated that they were not in a position to file the review as they were not aware of the legal provisions. The appeal came to be partly allowed way back in the year 2016 and the appellants-applicants were awarded compensation of Rs.297/- per square yard. Just because in Village Kakrala, the Apex Court had determined compensation of Rs.449/- per square yard, the applicants preferred this review application. The applicants have also stated that they could not file the review application within time due to the blockage of public transportation on account of COVID-19 guidelines.

3. The appeals were disposed of by the Apex Court in the year 2016. The pandemic struck India only in 2020-2021. It cannot be said as stated in Paragraph No. 8 of the affidavit filed in support of the delay condonation application that due to the guidelines of the Central Government and the State Government the public transportation was blocked, therefore, the applicants could not come to Allahabad to file the review. The decision in

Narendra and others Vs. State of U.P. and others, (2017) 9 SCC 426, cannot be of any avail to the appellants. The delay in filing the review application is absolutely deliberate. There is no reason why the appellants, who are sixteen in number, waited for six long years.

4. We have heard Sri Madan Mohan Chaurasiya, learned counsel for the review applicants, and requested him to explain the delay in filing the review application, to which he gave a strange reply that he advised his clients that they may take a chance by filing this review application after a period of six years. We are pained to note that an advocate should not give such an advise when there is no error apparent on the face of record nor was there any other reason that why the matter be re-agitated after it was finally decided.

5. In the present case, not only the appeal was heard and decided on merits but the legal heirs of the deceased appellants were also gracefully permitted by the Court to be substituted. The facts of the case will not permit us to condone the delay in filing the review application for the reasons which are given in the undermentioned paragraph.

6. Recently, the Apex Court has held that after transfer or retirement of a Judge, it is not good to file a review application without any rhyme or reason. In the instant case, the delay in filing the substitution application was condoned on 06.10.2016, and by the same order the appeal was also decided as the identical issue arising out of same reference order was involved in First Appeal No. 31 of 2011, which came to be decided with the same directions way back in the year 2014. We do not find any reason to condone the delay of six years, which is not explained as to why this review application is filed after such an inordinate delay. It is not even pointed out that other litigants had moved the Supreme Court or there is any other order, which can be followed by us, or which may be a subsequent order of the Apex Court that may guide us.

7. The expression "sufficient cause" in Section 5 of Act, 1963 has been held to receive a liberal construction so as to advance substantial justice and

generally a delay in preferring appeal may be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to parties, seeking condonation of delay. In **Collector, Land Acquisition Vs. Katiji, 1987(2) SCC 107**, the Court said, that, when substantial justice and technical considerations are taken against each other, cause of substantial justice deserves to be preferred, for, the other side cannot claim to have vested right in injustice being done because of a non deliberate delay. The Court further said that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. In **P.K. Ramachandran Vs. State of Kerala, AIR 1998 SC 2276** the Court said:

> *"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 to extend the period of limitation on equitable grounds."*

9. The Rules of limitation are not meant to destroy rights of parties. They virtually take away the remedy. They are meant with the objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The statute relating to limitation determines a life span for such legal remedy for redress of the legal injury, one has suffered. Time is precious and the wasted time would never revisit. During efflux of time, newer causes would come up, necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The statute providing limitation is founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). It is for this reason that when an action becomes barred by time, the Court should be slow to ignore delay for the reason that once limitation expires, other party matures his rights on the subject with attainment of finality. Though it cannot be doubted that refusal

to condone delay would result in foreclosing the suiter from putting forth his cause but simultaneously the party on the other hand is also entitled to sit and feel carefree after a particular length of time, getting relieved from persistent and continued litigation.

10. There is no presumption that delay in approaching the court is always deliberate. No person gains from deliberate delaying a matter by not resorting to take appropriate legal remedy within time but then the words "sufficient cause" show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of Court is also bound to change. Lapse on the part of litigant in approaching Court within time is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him.

11. We need not to burden this judgment with a catena of decisions explaining and laying down as to what should be the approach of Court on construing "sufficient cause" under Section 5 of Act, 1963 and it would be suffice to refer a very few of them besides those already referred.

12. In **Shakuntala Devi Jain Vs. Kuntal Kumari, AIR 1969 SC 575** a three Judge Bench of the Court said, that, unless want of bona fide of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

13. The Privy Council in **Brij Indar Singh Vs. Kanshi Ram ILR (1918) 45 Cal 94** observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. This principle still holds good inasmuch as the

aforesaid decision of Privy Council as repeatedly been referred to, and, recently in State of **Nagaland Vs. Lipok AO and others, AIR 2005 SC 2191**.

14. In **Vedabai @ Vaijayanatabai Baburao Vs. Shantaram Baburao Patil and others, JT 2001(5) SC 608** the Court said that under Section 5 of Act, 1963 it should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In the former case consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard and the basic guiding factor is advancement of substantial justice.

15. In **Pundlik Jalam Patil (dead) by LRs Vs. Executive Engineer, Jalgaon Medium Project and Anr. (2008) 17 SCC 448**, in para 17 of the judgment, the Court said :

> *"...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights."*

16. In **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, 2012 (5) SCC 157**, in para 18 of the judgment, the Court said as under:

> *"What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly*

> *negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."*

17. In our view, the kind of explanation rendered herein does not satisfy the observations of Apex Court that if delay has occurred for reasons which does not smack of mala fide, the Court should be reluctant to refuse condonation. On the contrary, we find that here is a case which shows a complete careless and reckless long delay on the part of applicants which has remained virtually unexplained at all. Therefore, we do not find any reason to exercise our judicial discretion exercising judiciously so as to justify condonation of delay in the present case.

18. Even on merits, we find no reason to interfere with the well reasoned judgment of the Court. Hence, the review application is also liable to be dismissed.

19. In view of the above, we dismiss the delay condonation application with a token cost of Rs.10,000/-.

20. Consequently, the review application is also dismissed as we have refused to condone the delay.

Order Date :- 7.2.2022
SKT/-

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Since this review application has been filed beyond time and application seeking condonation of delay has been rejected vide order of date, this review application stands dismissed being barred by limitation.

For order, see our order of the date passed on Civil Misc. Delay Condonation Application No. Nil of 2022.

Order Date :- 7.2.2022
SKT/-