Rohit Tandon & Ors Vs Deputy Director, Directorate Of Enforcement, Delhi

Court: Appellate Tribunal Under Prevention Of Money Laundering Act

Date of Decision: Dec. 7, 2017

Acts Referred: Constitution Of India, 1950 â€" Article 136, 226
Prevention Of Money Laundering Act, 2002 â€" Section 26, 26(3)

Hon'ble Judges: Manmohan Singh, J; G. C. Mishra, Member

Bench: Division Bench

Advocate: Manu Sharma, Ridhima Mandhar, Nitesh Rana, A.R. Aditya

Judgement

MP-PMLA-3942/DLI/2017 (COD)

1. The appellant has filed the appeal under Section 26 of Prevention of Money Laundering against the order dated 01st August, 2017. Alongwith the

appeal, the appellant has filed the application for condonation of delay.

2. On the last date of hearing, notice in the said application was issued. The respondent has filed the reply. In the Original Application, it was

submitted that there was a delay of 22 days, however, when it was pointed out to the learned counsel for the appellant that in fact certified copy was

ready on 01st August, 2017 itself. He admits that the limitation should have been counted from the said date. He says that if these nine days more

included, there is a delay of 31 days.

3. It is stated in the application that the delay has occurred as the appellant has lodged in the judicial custody since 28th December, 2016. He was not

able to give proper instruction to the counsel in time. On the other hand, Mr. Nitesh Rana, learned counsel for the respondent states that it is a mala

fide application as a matter of fact, the appellant has signed the Vakalatnama on 13th September, 2017 in favour of the counsel for the appellant ought

to have been filed on or before 25th September, 2017. He states that it was the duty of the appellant to see that parkar must have filed the appeal in

time.

4. The following are the judgments referred to:-

1. The decision of the Supreme Court in the case of Tukaram Kana Joshi & Ors. Thr. Power of Attorney Holder Vs. M.I.D.C and Ors. in para no.

11, 12 & 13 reads as under:

Ã¢â‚¬Å“11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the

same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the

delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can

never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the

demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter

within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The

validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. : AIR 1974

SC 2271; State of M.P. and Ors. v. Nandlal Jaiswal and Ors. : AIR 1987 SC 251; and Tridip Kumar Dingal and Ors. v. State of West Bengal

and MANU/SC/8382/2008 : (2009) 1 SCC 768;)

12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who

moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event

that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the

conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical

considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to

have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights

have infact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports and Ors, 1968

: AIR 1970 SC 769; Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors.: AIR 1987 SC 1353; DehriRohtas Light Railway

Co. Ltd. v. District Board, Bhojpur and Ors.: AIR 1993 SC 80;2 Dayal Singh and Ors. v. Union of India and Ors.: AIR 2003 SC 114;0 and

Shankara Co-op Housing Society Ltd. v. M. Prabhakar and Ors. :AIR 2011 SC 2161)

13. In the case of H.D Vora v. State of Maharashtra and Ors. : AIR 1984 SC 866 ,this Court condoned a 30 year delay in approaching the

court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the stated was

assailed.Ã¢â‚¬â€‹

2. State (NCT OF DELHI) v. AHMED JAAN reported in (2008) 14 S.C.C 5 8p2ara-10 to 12 has dealt with the issue of delay. The same are

reproduced here under:-

10. At this juncture, it is stated, at this length of time it would not be proper to set aside the order of High Court.

11 A. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is

not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in

using the discretion. In N. Balakrishnan v. M. Krishnamurthy (AIR 1998 SC 3222)it was held by this Court that Section 5 is to be construed

liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person

concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can

be recorded in the peculiar circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which,

in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government

without being unduly indulgent to the slow motion of its wheels.

B. What constitutes sufficient cause cannot be laid down by hard and fast rules. In New India Insurance Co. Ltd. v. Shanti Misra (1975 (2)

SCC 840) this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into

a rigid rule of law. The expression ""sufficient cause"" should receive a liberal construction. In Brij Indar Singh v. Kanshi Ram (ILR (1918)

45 Cal 94 (PC) it was 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. In Shakuntala Devi Jain v. KuntalKumari(AIR 1969 SC 575)a Bench of three Judges had

held that unless want of bona fides 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.

C. In Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979 (4) SCC 365)which is a case of negligence of the counsel which misled a

litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Mata Din v. A. Narayanan (1969 (2) SCC 770,) this

Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is

always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the

mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

D. In State of Kerala v. E. K. Kuriyipe (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of

delay is a question of fact dependant upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath (1982 (3) SCC

366), it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136

can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for

hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

E. In O. P. Kathpalia v. Lakhmir Singh (1984 (4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results

in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector Land Acquisition

v. Katiji (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that

Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression

sufficient cause"" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice -

that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably

liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the

hierarchy. This Court reiterated that the expression ""every day's delay must be explained"" does not mean that a pedantic approach should

be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations

are pitted 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. There is no presumption that delay is occasioned deliberately, or on account of

culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

Judiciary is not respected 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. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in

the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant.

The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law

is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The

delay was accordingly condoned.

F. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment

sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-

the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause

of the community, does not deserve a litigant-non- grata status. The courts, therefore, have to be informed with the spirit and philosophy of

the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in

turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the

matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Prabha v. Ram

ParkashKalra (1987 Supp SCC 339), this Court had held that the court should not adopt an injustice-oriented approach in rejecting the

application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal

in accordance with law.

G. In G. Ramegowda, Major v. Spl. Land Acquisition Officer (1988 (2) SCC 142,) it was held that no general principle saving the party

from all mistakes of its counsel could be laid. The expression ""sufficient cause"" must receive a liberal construction so as to advance

substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross

negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which

Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such

defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are

collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no

doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the

acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where

public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers

were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it

might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar

to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a

considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is

rightly said that those who bear responsibility of Government must have ""a little play at the joints"". Due recognition of these limitations on

governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It

would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit

in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year

was accordingly condoned.

H. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from

table to 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 requires adoption of pragmatic approach in justice-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.

The above position was highlighted in State of Haryana v. Chandra Mani and Ors. (1996 (3) SCC 132;) Special Tehsildar, Land

Acquisition, Kerala v. K.V. Ayisumma (1996 (10) SCC 634) and State of Nagaland v. Lipok AO and Ors. (2005 (3) SCC 752.) It was noted

that adoption of strict standard of proof sometimes fail to protract public justice, and it would result in public mischief by skilful

management of delay in the process of filing an appeal

12. We find that the appellant had indicated the reasons for the delay in filing and re-filing the revision petition. The High Court

unfortunately did not deal with those explanations and merely stated that the delay has not been explained. The High Court was required to

examine the correctness of the explanation given, keeping in view the principles laid down by this Court in several cases. According to us,

the explanations offered were plausible and deserved to be accepted. Accordingly, we set aside the impugned order of the High Court and

remit the matter to it to hear the Criminal Revision on merits. It is made clear that we have not expressed any opinion on merits.

5. The proviso of sub-Section 3 of Section 26 permits the appellant Tribunal to condone the delay after the expiry of 45 days if there was sufficient

case.

6. Having considered the facts and circumstances of the case. We are inclined to condone the delay in filing of the appeal as valuable rights are

involved in the matter. The appellant has been able to show sufficient cause for not filing the appeal in time. In the interest of justice, subject to the

cost of Rs. 5,000/- which shall be paid by the appellant to the counsel for the respondent within six weeks from today.

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7. Issue notice. Reply be filed within six weeks. Rejoinder four weeks thereafter.

8. List on 25th April, 2018.