(2024) 04 SC CK 0006

Supreme Court Of India

Case No: Civil Appeal No. 4672 Of 2024

Union Of India & Anr.		APPELLANT
	Vs	
Jahangir Byramji Jeejeebhoy (D) Through His Lr		RESPONDENT

Date of Decision: April 3, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code Of Civil Procedure, 1908 - Order 20 Rule 12(1)
- Limitation Act, 1963 - Section 5

Hon'ble Judges: Aniruddha Bose, J; J.B. Pardiwala, J

Bench: Division Bench

Advocate: R. Venkataramani, R. Balasubramanian, Vikramjit Banerjee, Abhishek Panday, Chitvan Singhal, Arvind Kumar Sharma, Sudhanshu S. Chaudhari, Charushila Sawant, Sharanagouda Patil, Supreeta Sharanagouda, M. Veeraragavan, Gautami Yadav, Pranjal Chapalgaonkar, Arvind Shah

Final Decision: Dismissed

Judgement

J.B. Pardiwala, J

1. Leave granted.

2. This appeal arises from an order passed by a learned single Judge of the High Court of Judicature at Bombay dated 09.07.2019 in Civil Application No. 1494 of 2019 filed in Writ Petition No. 2307 of 1993 by which the High Court declined to condone the delay of 12 years and 158 days in filing the application for restoration of the Writ Petition No. 2307 of 1993 referred to above which came to be dismissed for non-prosecution vide order dated 10.10.2006.

3. The facts giving rise to this appeal may be summarized as under.

4. The suit property bearing S. No. 402, Bungalow No. 15A, situated at Staveley Road, Pune Cantonment, Pune-1 was leased by the respondent in favour of the appellants on 09.03.1951.

5. As the appellants committed breach of the terms of the lease deed, the respondent herein instituted civil suit bearing No. 2599 of 1981 before the Court of the 4th Additional Small Causes Judge, Pune for the recovery of the possession of the suit property & arrears towards the rent.

6. On 02.05.1987, the suit came to be allowed and the final decree came to be passed in the following terms:

"ORDER

1) The plaintiffs are entitled to possession of the suit premises.

2) The defendant shall deliver vacant and peaceful possession of the suit premises to the plaintiffs or before 30.6.1987.

3) The defendants do pay by way of damages and mesne profits and notice charges Rs. 17,383/- to the plaintiffs.

4) The defendant shall also pay future mesne profits at the rate of Rs. 316/- per month from the date of filing of the suit till recovery of possession of the suit premises under order 20 rule 12(1) of CPC.

5) The defendant shall pay costs of this suit to the plaintiffs and shall bear their own."

7. The appellants herein challenged the judgment and decree referred to above by preferring Civil Appeal bearing No. 850 of 1987 in the Court of the District Judge, Pune. The appeal filed by the appellants herein came to be dismissed vide the judgment and order dated 29.08.1992 passed by the 8th Additional District Judge, Pune.

8. The judgment and order passed by the first appellate court dismissing the appeal referred to above came to be challenged by the appellants herein by filing the Petition No. 2307 of 1993 before the High Court of Bombay invoking its supervisory jurisdiction under Article 227 of the Constitution of India.

9. On 10.10.2006, the Petition No. 2307 of 1993 referred to above came to be dismissed for non-prosecution. The order reads thus:

"Coram : D.G. Deshpande - J.) on 10.10.06

AND UPON hearing Shri. D.S. Mhaispurkar for Respondent Nos. 1A to 1C and 2 this Court has passed the following order:-

"None for the Petitioners. Mr. D.S. Mhaispurkar for the Respondents 1A to C and 2.

Petition is dismissed. Rule discharged.

Interim order is vacated.

IT IS ACCORDINGLY ordered that this writ petition is disposed of as per the accompanying court's order. The directions given in the court's order hereinabove shall be carried out and complied with scrupulously.

It is accordingly ordered that this order be punctually observed and carried into execution by concerned."

10. On 26.11.2013 the respondent herein filed Execution Petition bearing No. 16 of 2014. The appellants herein were served with the notice in the execution proceedings on 18.03.2016 by the Executing Court.

11. On 20.08.2018, the appellants herein filed an application seeking to set aside the order passed by the Executing Court. On 30.10.2018 the Executing Court set aside the said order referred to above.

12. On 12.04.2019, the appellants herein filed Civil Application No. 1294 of 2019 seeking restoration of the Petition No. 2307 of 1993 referred to above and for condonation of delay of 12 years and 158 days in preferring such restoration application.

13. On 09.07.2019, a learned single Judge of the High Court vide the impugned order declined to condone the delay of 12 years and 158 days in filing the restoration application.

14. In view of the aforesaid, the appellants are here before this Court with the present appeal.

Submissions on behalf of the appellants

15. Mr. R. Venkataramani, the learned Attorney General for India appearing for the appellants vehemently submitted that he has a very good case on merits and considering the merits alone, the delay of 12 years and 158 days deserves to be condoned. The learned Attorney General laid much emphasis on the fact that the suit property is situated within the Pune cantonment which is under the ownership of the Union of India and the same was held by the respondent herein on old grant lease and in such circumstances, according to the learned Attorney General, the respondent in his capacity as a private party should not be permitted to deprive the Government of its land after having admitted that the super structure alone belongs to him and that the land belongs to the Government.

16. On the aspect of delay of 12 years and 158 days in filing the restoration application before the High Court, the learned Attorney General has no explanation worth to offer.

Submissions on behalf of the respondent

17. Mr. Sudhanshu Chaudhari, the learned senior counsel appearing for the respondent, on the other hand, vehemently opposed the present appeal and submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

18. He submitted that no sufficient case worth the name has been assigned by the appellants for the purpose of getting such a long and inordinate delay of more than 12 years condoned for filing the restoration application.

19. In such circumstances referred to above, the learned counsel prayed that there being no merit worth the name in the present appeal, the same may be dismissed.

Analysis

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order?

21. When this matter was heard for the first time by this Bench, we brought to the notice of the learned Attorney General something very relevant as observed by the High Court in para 18 of its impugned order. Para 18 of the impugned order reads thus:

"18. During the course of hearing, I suggested Mr. Singh that in case the defendants are ready and willing to handover possession of the suit property to the respondents, the Court will consider restoring the Petition to its original position. The respondents in turn will give undertaking to the effect that in case the defendants succeed in the Petition, before approaching the Apex Court, they will handover possession of the suit property to the defendants. Upon taking instructions, Mr. Singh submitted that defendants are not ready and willing to handover possession of the suit property. In view of the aforesaid discussion, no case is made out for condoning the delay."

22. Thus, it appears that the High Court made a reasonable suggestion to the appellants that if the possession of the suit property is handed over to the respondent, then probably the Court may consider restoring the Petition No. 2307 of 1993 which came to be dismissed for default on 10.10.2006. The High Court noted as above that the learned counsel appearing for the appellants declined to hand over the possession of the suit property to the respondent herein. We reiterated the very same suggestion before the learned Attorney General that if the appellants are ready and willing to hand over the suit property to the respondent, then, despite there being a long and inordinate delay, we may consider condoning the same and remanding the matter back to the High Court so that the High Court may be in a position to hear the matter on its own merits. However, the learned Attorney General, after taking instructions from his clients, regretted his inability to persuade the appellants to hand over the possession of the suit property to the respondent.

23. In such circumstances referred to above, we were left with no other option but to call upon the learned Attorney General to make submissions as to why we should look into only the merits of the matter and condone the delay of 12 years and 158 days.

24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the ‘Sword of Damocles’ hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

28. At this stage, we would like to quote few observations made by the High Court in its impugned order pointing towards lack of bona fides on the part of the appellants. The observations are as under:-

"9. A perusal of paragraph 4 extracted hereinabove shows that on oath, solemn statement is made that notice of Darkhast No.16 of 2014 for execution of the decree issued by the executing Court was received by the Department on 25.02.2019. As against this, in paragraph 3 of the additional affidavit dated 04.07.2019 made by Rajendra Rajaram Pawar, it is stated that the averments made in paragraph 4 as regards service of Darkhast on 25.02.2019 is factually incorrect. Notice of Darkhast No. 16 of 2014 was received by the defendants on 18.03.2016. The error in the application is out of inadvertence for which he tendered unconditional apology. It is further stated that inadvertent mistake on facts as to knowledge of execution proceedings was purely because of oversight in the light of possibilities of issuance of possession warrant by the executing court and requirement of expeditious urgency of moving before this Court to save the proceeding in litigation since 1981 which otherwise would have got frustrated. He stated that the same is nothing beyond human error.

x x x x

12. The assertions made in paragraph 4 are bereft of any particulars and are totally vague. In fact the solemn statement made in paragraph 4 that notice of Darkhast for execution of the decree issued by the executing Court was received by the Department on 25.02.2019, to put it mildly, is incorrect statement. In view of paragraph 3 of the additional affidavit dated 04.07.2019 made by Rajendra Rajaram Pawar, it is evident that notice of Darkhast was received by the defendants on 18.03.2016. It is material to note that no particulars are given as to when the Department sought legal opinion. There is also no explanation as to why Department did not instruct lawyer in the High Court to apply for restoration of the Petition and why the Department defended execution proceedings. It is worthwhile to note that execution proceedings were filed by the respondents only because Writ Petition was dismissed. If the Writ Petition was restored, automatically the execution proceedings would have been stayed by the executing Court. Instead of adopting appropriate proceedings, the defendants unnecessarily went on defending the execution proceedings. In paragraph 4(b) though it is stated that Department was regularly following up with its panel lawyer till 2003, this statement is also not substantiated by producing any document. Even if I accept that the Department was regularly following up with its panel lawyer till 2003, there is no explanation worth the name as to why the Department did not follow up the matter between 2003 and 2006 when the Petition was dismissed in default. That apart, equally, there is no explanation as to why no follow up action was taken by the officers between 2006 and 2016 when Department acquired knowledge about dismissal of Writ Petition on 18.03.2016.

13. It is no doubt true that while considering the application for condonation of delay, the expression 'sufficient cause' has to be liberally construed. It, however, does not mean that without making any sufficient cause, the Court will condone the delay regardless of the length of the delay. In the present case, the delay is of 12 years and 158 days. A perusal of the application as also the additional affidavit hardly indicates any sufficient cause for condoning the unpardonable delay of 12 years and 158 days."

29. In Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation, (2010) 5 SCC 459, this Court rejected the application for condonation of delay of 4 years in filing an application to set aside an exparte decree on the ground that the explanation offered for condonation of delay is found to be not satisfied.

30. In Postmaster General and others v. Living Media India Limited, (2012) 3 SCC 563, this Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held that condonation of delay is not an exception and it should not be used as an anticipated benefit for the government departments. In that case, this Court held that unless the Department has reasonable and acceptable reason for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted. In Para Nos. 25, 26, 27, 28, and 29 respectively, this Court dealt with the scope of 'sufficient cause' and held as follows:

"25. We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in Office of the Chief Postmaster v. Living Media India Ltd. [(2009) 8 AD 201 (Del)] as 11-9-2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 8-1-2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11-9-2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 8-1-2010 i.e. after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine

difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

31. In the case of Lanka Venkateswarlu (D) by LRs v. State of Andhra Pradesh & others, (2011) 4 SCC 363, this Court made the following observations:

"20. In N. Balakrishnan, [(1998) 7 SCC 123] this Court again reiterated the principle that: (SCC p. 127, para 11)

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that [the] parties do not resort to dilatory tactics, but seek their remedy promptly."

21 to 27.....

28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. 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. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications 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."

32. In the case of Pundlik Jalam Patil (D) by LRs. v. Executive Engineer, Jalgaon Medium Project & others, (2008) 17 SCC 448, this Court held as follows:

"19. In Ajit Singh Thakur Singh v. State of Gujarat [(1981) 1 SCC 495 : 1981 SCC (Cri) 184] this Court observed: (SCC p. 497, para 6)

"6. ... it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause."

(emphasis supplied)

This judgment squarely applies to the facts in hand.

x x x x

21. Shri Mohta, learned Senior Counsel relying on the decision of this Court in N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123] submitted that length of delay is no matter and acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as a part of dilatory tactics, the court must show utmost consideration to the suitor. The very said decision upon which reliance has

been placed holds that the law of limitation fixes a lifespan for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It was observed: (SCC p. 128, para 11)

"11. ... It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

22. In Ramlal v. Rewa Coalfields Ltd. [AIR 1962 SC 361] this Court held that: (AIR pp. 363-65)

"In construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree-holder to treat the decree as binding between the parties and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. It is further necessary to emphasise that even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party or its bona fides may fall for consideration." (emphasis supplied)

23. On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise courts' discretion in its favour."

33. In the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others, (2013) 12 SCC 649, this Court made the following observations:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs.

37. Pending application, if any, shall also stand disposed of accordingly.