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(2013) 7 ADJ 376 : (2013) 5 ALJ 544 : (2013) 99 ALR 710 : (2014) 1 AWC 245 : (2013) 120 RD 288

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 31606 of 1999

Ramesh and Another — APPELLANT

Vs

Collector and Others — RESPONDENT

Date of Decision: Feb. 14, 2013

Acts Referred:

- Limitation Act, 1963 - Section 5
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 122B, 333

Citation: (2013) 7 ADJ 376 : (2013) 5 ALJ 544 : (2013) 99 ALR 710 : (2014) 1 AWC 245 : (2013) 120 RD 288

Hon'ble Judges: Ran Vijai Singh, J

Bench: Single Bench

Advocate: U.K. Mishra and A.K. Mishra, for the Appellant; D.D. Chauhan and V.K. Singh, for the Respondent

Final Decision: Allowed

Judgement

Ran Vijai Singh, J.
Heard learned counsel for the petitioners, learned Standing Counsel and learned counsel for the gaon sabha. Through this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the order dated 29.4.1999 passed by respondent No. 1 in revision No. 10 of 1997-98 (Daryav and others v. Gaon Sabha) as well as order dated 27.2.1998 passed by respondent No. 2 in case No. 217 of 1997 filed u/s 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950. It appears, for encroachment over gate No. 1086, which is recorded as khalihan, notices were issued to the petitioners on Form 49-A for removal of encroachment of 90 square meter land. The petitioners have filed their objection denying the encroachment over the said land. The Tehsildar vide order dated 27.2.1998 has found the petitioners as unauthorized encroacher over the gaon sabha land and imposed damages of Rs. 2,500/-.

2. Aggrieved by the order dated 27.2.1998, passed by the Tehsildar, petitioners herein filed a revision u/s 333 of the Act, which was barred by time. Petitioners have also filed an application for condonation of delay. The District Magistrate has rejected the petitioners" application holding that the delay has not been satisfactorily explained. Consequently, he rejected the application for condonation of delay and also dismissed the revision as barred by time.

3. Learned counsel for the petitioners contended that the delay was explained properly and the District Magistrate has erred in disbelieving the petitioners" stand taken in the application for condonation of delay.

4. I have heard learned counsel for the parties and also perused the record.

5. It is not in dispute that the order of Assistant Collector dated 27.2.1998 was challenged by the petitioners on 17.4.1998. The limitation for filing the revision is 30 days.

6. It appears that the revision was barred by time about 20 days.

7. The Limitation Act has been enacted for the purposes of fixing time-limit to a litigant to institute an action. The purpose of the Limitation Act is not to put a bar in instituting an action if a person comes after expiry of period fixed under the Limitation Act for instituting such action as, for many reasons, a person may not be able to institute an action within the time-limit fixed under the Limitation Act and for that purpose, the Legislature has taken care by introducing Section 5 in the Act, which is meant for extension of time of limitation by Court for instituting an action. When a person comes after the expiry of the period of limitation fixed under the Limitation Act, he has to explain the reason for not filing or instituting the action within time. For that purpose, the litigant is supposed to file an application u/s 5 of the Limitation Act for condonation of delay/extension of period of limitation and in case such an application is filed, the Court concerned is supposed to consider the application condoning the delay keeping in mind the justice oriented approach and exercise the discretion as far as possible on the basis of the explanation furnished in favour of a litigant, who has knocked the door of the Court for imparting substantial justice. The law of limitation is not meant to take away the right of appeal and while dealing with the matter u/s 5 of the Limitation Act, the Court must consider such application liberally. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the Apex Court has considered the various aspects, where the condonation of delay is involved and issued following guidelines for the Courts/tribunals while dealing with the delay condonation application:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties,

3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay The doctrine must be applied in a rational common sense pragmatic manner.

4. 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.

5. 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.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. Taking note of the aforesaid decisions, the Apex Court in the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, , after considering various cases of the Apex Court on condonation of delay application, has held:

Para 12. ...The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented "process approach rather than the technical detention of sufficient case for explaining every day"s delay. The factors which are peculiar to and characteristic of the functioning 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-ï¿½-vis private litigant could be laid to prove strict standards of sufficient cause.

Para 13. ...It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

9. This view has constantly been followed by the Apex Court in numerous cases thereafter. Reference may be given in Apangshu Mohan Lodh and Others Vs. State of Tripura and Others, , State (NCT of Delhi) Vs. Ahmed Jaan, , Indian Oil Corporation Ltd. and Others Vs. Subrata Borah Chowlek, etc., , in Jeet Narain and another v. Govind Prasad and others, (2010) 3 ADJ SC 470, the Apex Court has condoned the delay of 26 years considering the merit of the case in which the order was obtained by playing fraud.

10. In view of the aforesaid decisions of the Apex Court, it is abundantly clear that while considering the delay condonation application, the Court has to see the merit of the case also as the law of limitation is not meant to take away the right of appeal. The Courts are

meant for imparting justice and not to scuttle the justice on technicalities. The length of delay is also not very much material if there is a substance on merit.

11. However, if the Court/tribunal, while dealing with such applications, comes to the conclusion that there had been any slackness/negligence on the part of the parties in not instituting the action well within time and that has caused inconvenience to the other side, the inconvenience caused to the other side cannot be made basis for not extending the time of period of limitation and the inconvenience caused to the other side may be compensated by imposing some cost payable to the person to whom such inconvenience is caused, but in all circumstances, efforts should be made to adjudicate the matter on merit instead of throwing it at the threshold on the ground of limitation, unless the explanation is hopeless and it revives a state claim.

12. Here in this particular case, the petitioner, who happens to be a rustic villager, residing in a remote area of District Jalaun, has knocked the door of the revisional Court within 52 days, whereas the period of limitation is 30 days and gave the reason for not approaching the Court well within time. It is common knowledge that the rustic villagers are not conversant with the legal provisions and its implications. They move on the advice of the local counsel on very slow pace and sometimes, in moving also there may be many hurdles. The approach of the Court should be to handle the cases of such person, particularly, the condonation of delay matters, softly with justice oriented approach. Sometimes, economic misery, family problems and lack of legal knowledge become the reasons for not approaching the Court within time. These are genuine and bona fide problems of the villagers. The Courts are meant, as has been noticed hereinabove, for imparting substantial justice to the parties.

13. The limitation is fixed only for the purpose to approach the Court within a certain time limit, but simultaneously, the Legislature has also taken care of such situations where a person may not approach the Court in time limit, in that eventuality, Section 5 of the limitation will come to the rescue of the litigant, which provides power to the Court to extend the period of limitation. This power is to be used by the Courts/tribunals having broad vision with justice oriented approach. Narrow approach to such matters would lead to injustice, which is neither the purpose of establishment of the Court nor the purpose of Limitation Act.

14. I am of the considered view that the District Magistrate has erred in rejecting the application of the petitioner which was barred by time only about 20 days. In view of the foregoing discussions, the writ petition succeeds and is allowed. The impugned order dated 29.4.1999 passed by respondent No. 1 in revision No. 10 of 1997-98 (Daryav and others v. Gaon Sabha) is hereby quashed. The delay in filing revision is hereby condoned. The District Magistrate, Jalaun is directed to decide the revision on merit in accordance with law.