

(2014) 01 AHC CK 0258

Allahabad High Court

Case No: Civil Misc. Delay Condonation Application No. 3134 of 2014 in Sales/Trade Tax
Revision Defective No. 1 of 2014

Commissioner of Commercial
Tax

APPELLANT

Vs

Rani Sundri Estates Ltd.

RESPONDENT

Date of Decision: Jan. 7, 2014

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2014) 309 ELT 237

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Judgement

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Sudhir Agarwal, J.

This revision has been preferred with a delay of 223 days therefore is barred by time. In a very casual fashion, delay has sought to be explained, inasmuch as, it is admitted that order passed by Tribunal dated 13-2-2013 was received by Department on 23-2-2013 but thereafter first step was taken on 24-4-2013 by Deputy Commissioner-State Representative, Commercial Tax, Varanasi, who requested Deputy Commissioner, Commercial Tax, Sector-7, Varanasi vide letter dated 24-4-2013 to send typed copy of the assessment order, first appellate order and order of Tribunal. The Deputy Commissioner, Commercial Tax, Sector 7, Varanasi sent typed copy along with letter dated 5-6-2013. After one month, Deputy Commissioner-State Representative, Commercial Tax, Varanasi sent the matter to Joint Commissioner, Commercial Tax (High Court Works), Allahabad vide letter dated

9-7-2013 with the request to file revision and Deputy Commissioner, Commercial Tax, Allahabad vide letter dated 25-7-2013 returned the file in original to Deputy Commissioner-State Representative, Commercial Tax, Varanasi to contact Standing Counsel. Then Deputy Commissioner - State Representative, Varanasi vide letter dated 19-9-2013 handed over documents to the deponent of affidavit to file revision and then this revision has been filed after more than three months even thereafter. It is true that when State is a party, and file appeal/revision, as the case may be, with some delay, it may deserve some leverage for official hierarchical steps for permission etc. but a wholly unexplained, reckless and negligent approach of delay running in seven months and more cannot be overlooked particularly when it is not the case of applicants that they have taken any action against erring individual.

2. The expression "sufficient cause" in Section 5 of [Limitation] 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, Anantnag and Another Vs. Mst. Katiji and Others,](#), 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.

3. In the matters where action is brought by Government, no person is individually affected and in ultimate analysis it is the public interest which suffers. The decisions of Government are collective and institutional and do not share the characteristic of decisions of private individuals. The law of limitation though is equal and apply at par to both private individual and Government but where the Government makes out a case of sufferings to public interest owing to acts of fraud and bad faith on the part of its officials and agents, and also, the intention of Government not to allow such officers of doubtful integrity to go scot free, the Court should also come forward to do justice in the interest of public at large, but, a mere eye wash kind of explanation, without any honest intention of State authorities to proceed against tainted officers, or, those who have acted in a bad faith, or, those who have worked negligently, the explanation that delay must be condoned in public interest would be superficial and lacking bona fide, hence difficult to be accepted by Court.

4. In [G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore,](#) of the judgment, the Court said:

"8.....Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which

are peculiar to and characteristic of the functioning of the Government. Governmental 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 a reasonable limits-is necessary if the judicial approach is not 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. In the opinion of the High Court, the conduct of the law-officers of the Government placed the Government in a predicament and that it was one of these cases where the mala fides of the officers should not be imputed to Government."

5. In [P.K. Ramachandran Vs. State of Kerala and Another](#), 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."

6. 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 rei publicae 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.

7. 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.

8. I 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 Limitation Act, 1963 and it would be suffice to refer a very few of them besides those already referred.

9. In [Shakuntala Devi Jain Vs. Kuntal Kumari and Others](#), 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.

10. The Privy Council in 22 CWN 169 (Privy Council) 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](#), .

11. In [Vedabai @ Vaijyanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others](#), the Court said that under Section 5 of Limitation 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.

12. In the present case, as already said, in my view, 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, will not help the petitioner in any manner keeping in view the kind of explanation rendered herein since I find that here is a case which shows a complete careless and reckless long delay on the part of applicant, which has remained virtually unexplained at all. Therefore, I do not find any reason to exercise my judicial discretion exercising judiciously so as to justify condonation of delay in the present case.

13. It is then contended that in revenue matters, cases involving substantial questions, be not made to suffer as that will be against public interest and therefore, the Court should be slow in non suiting the revision only on the ground of

limitation.

14. Since it is contended that issue raised are substantially in public importance, I have also looked into merits of the matter and finds that no question of law, in fact, has arisen in the matter and it is covered by pure findings of fact. The Assessing Authority proceeded to consider builder to undergo "work contract" in the light of decision of Apex Court in [K. Raheja Development Corporation Vs. State of Karnataka](#), but first appellate authority as well as Tribunal has found that in the case in hand substantial construction was undergone by builder from his own funds i.e. from his own raw material engaging labour contract. He has raised construction over his own land and a small amount of money was deposited by certain prospective buyers to get some booking of the flats and allotment but amount deposited by them as earnest money was not substantial so as to turn construction in question into a "work contract". In this regard, Tribunal has recorded following findings:

15. The Tribunal has followed decision of Apex Court in M/s. Assotech Realty Private Limited v. State of U.P. and Another, 2007 NTN (Vol. 34) - 67. In my view, this is not a case wherein substantial question of law is involved and has gone undecided on account of unsatisfactory delay by revisionist. The application seeking condonation of delay is, therefore, rejected.