
(2014) 12 MP CK 0109

Madhya Pradesh High Court (Gwalior Bench)

Case No: S.A. No. 526 of 2009

State of M.P.

APPELLANT

Vs

Mannulal

RESPONDENT

Date of Decision: Dec. 8, 2014

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2015) 1 MPLJ 307

Hon'ble Judges: M.C. Garg, J

Bench: Single Bench

Advocate: B. Raj Pandey, Government Advocate, Advocates for the Appellant; Sanjay Kumar Sarma, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.C. Garg, J.

Appellant/state by Shri B. Raj Pandey, Govt. Advocate. Respondent by Shri Sanjay Kumar Sharma, Advocate. Heard on I.A. No. 16407 of 2009 filed under section 5 of the Limitation Act by the appellant for condoning the delay of 1911 days.

2. The application has been opposed by the respondent. In support of the application, the appellant has also filed an application to bring on record some other facts being I.A. No. 3952 of 2010.

3. I have gone through the application to bring on record the additional facts. The additional facts as disclosed by the appellant are as under:

"(I) That, the impugned judgment and decree was passed by learned Lower Appellate Court allowing appeal filed by respondent vide judgment and decree on 16-4-2004 and after permission granted by the Law Department, present second appeal has been filed. The delay was occurred in filing second appeal before this Hon'ble Court because of the procedural formalities. There is certain

communication between the department at different levels. Copies of the aforesaid documents are being submitted along with application.

(II) That, thereafter, legal opinion was sought on 15-10-2007. Copy of the legal opinion sought on 15-10-2007 is also being submitted herewith. Thereafter, on 18-10-2007, Tehsildar Guna referred the matter to Collector, District Guna. Copy of the letter dated 18-10-2007 is being submitted herewith. Thereafter, on 27-10-2007, Collector, District Guna referred the matter to the Secretary, Revenue Department, M.P. Bhopal. Copy of the aforesaid letter dated 27-10-2007 is being submitted herewith. But in the meanwhile, another reminder was issued on 6-2-2009 by the Tehsildar, Guna to Collector District Guna. Copy of the reminder dated 6-2-2009 is also being submitted herewith. Thereafter, Collector Distt. Guna further issued reminder to the Secretary of the Revenue Department on 7-2-2009. Copy of the letter dated 7-2-2009 is being submitted herewith. Thereafter, another reminder was issued by the Collector, District Guna to the Secretary and the State Home Department on 20-2-2009. Copy of the aforesaid letter dated 20-2-2009 is being submitted herewith. It is also pertinent to mention here that Collector, District Guna on 8-4-2009 issued a letter to the Sub Divisional Officer Guna with regard to delaying the matter and for that, he is responsible. Copy of the office letter dated 8-7-2009 is being submitted herewith.

(IV) That, thereafter on 15-4-2009 Collector, District Guna referred the matter to the Secretary, Revenue Department with regard to delay caused by certain persons. It is also pertinent to mention here that in the aforesaid office letter, it is specifically mentioned that the delay has been caused by the then Tehsildar Shri Aditya Sharma as well as Smt. Santosh Joshi Asstt. Grade III and Government Advocate Shri Bhanupratap and for that, separate action has been taken. Copy of the letter dated 15-4-2009 is being submitted herewith.

(V) That subsequently, law Department granted permission on 27-5-2009 for filing second appeal before this Hon"ble. Court. Thereafter, Collector, vide order dated 10-6-2009 appointed OIC for filing second appeal before this Hon"ble Court and thereafter, immediately, this second appeal was filed on.

(VI) That, present applicant has also filed application for condonation of delay with regard to filing appeal late."

4. The manner in which, the appellant has dealt with the matter speaks volume and shows utter negligence on the part of the appellant to consider the issue of condonation.

5. The counsel for the appellant without telling as to what question of law is involved in this matter, has prayed that the delay of even 1954 days could be condoned if the appeal raises question of law relying upon the judgment of the Apex Court in the case of [State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan and Others,](#) .

6. The facts giving rise to the filing of this appeal are that the respondent filed a suit for declaration of ownership of the property in question claiming ownership on the basis of patta. The said suit was dismissed on the plea of the respondent that the patta was cancelled by the competent authority. However, the first Appellate Court allowed the appeal of the respondent by holding that despite the allegation of the applicant about cancellation of patta, the revenue entries show that the land was still in the name of the respondent. Learned counsel for the appellant submits that merely because there were entries, it will not prove his possession.

7. Even if this argument is of any value, the factum of keeping the matter pending for more than three years and doing nothing to assail the judgment of the first Appellate Court, shows that the appellant is utterly careless and in this case, no question of law is involved which requires any condonation of delay as pleaded.

8. A Division Bench of this Court in State of M.P. vs. Virendra Kumar Sharma passed in Writ Appeal No. 509 of 2014 has held as under:

"The law with respect to the consideration of sufficient cause is well settled in the latest judgment delivered by Hon"ble Supreme Court in the case of [Office of the Chief Post Master General and Others Vs. Living Media India Ltd. and Another](#), wherein the Hon"ble Apex Court has held as under:--

(11) 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 LPA Nos. 418 and 1006 of 2007 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 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 only on 8-1-2010, i.e. after a period of nearly four months. 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.

(12) 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. 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 fide, 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.

(13) 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

(14) In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.

Hence, I find no good reason to condone the delay in this case. Hence, I.A. No. 16407 of 2009 and 3952 of 2010 are dismissed. Consequently, the second appeal is also dismissed.