Krishna Continental Ltd. and Sh. R.D. Bhanot Vs Sh. Balkrishan Sharma

Court: Delhi High Court

Date of Decision: Aug. 8, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 13
Limitation Act, 1963 â€" Section 5

Hon'ble Judges: J.M. Malik, J

Bench: Single Bench

Advocate: K.K. Rohatgi, for the Appellant; Sikander Arora, for the Respondent

Final Decision: Dismissed

Judgement

J.M. Malik, J.
Vide order dated 4th April, 2005, the trial court dismissed the applications moved by the appellants under Order 9 Rule 13

CPC and u/s 5 of the Limitation Act. Aggrieved by that order, the present appeal has been preferred. The appellants appeared before the trial

court and submitted their written statement. Thereafter, the appellants were proceeded against ex parte on 2nd August, 2004 The ex parte

judgment was delivered on 19th August, 2004 The appellants moved an application under Order 9 Rule 13 CPC before the trial court. A copy of

the said application was filed before me as Annexure 9 at pages 67 to 69. Para Nos. 6 and 7 of that application are reproduced as under:

6. That the Applicants/Defendants were under bona fide impression that the case is being pursued by the Counsel in the proper manner and

whenever there will be any requirement of the presence of the Authorized Representative, the Counsel will inform the Applicants/Defendants. Time

to time official of the Applicants/Defendants were contacting Mr. Saxena for the development of the case and getting assurance that he was

pursuing the case properly and in case of any requirement he will contact the Applicants/Defendants. Mr. Saxena never informed the

Applicants/Defendants that the case is fixed for admission/denial and Authorized Representative''s presence is required for the same. The Counsel

also, in a very unprofessional manner, without informing the Applicants/Defendants, did not appear in the case and the ex-parte order was passed.

The Applicants/Defendants is separately filing an application in this regard against Mr. Saxena for the professional misconduct before the

appropriate Forum.

7. That non-appearance of the Applicants/Defendants was not intentional or deliberate, it was only because of lack of the knowledge of the date of

hearing, as the counsel did not inform the same. The applicants/Defendants has a very good case in their favor and only because of negligence of

the Counsel after filing of the Written Statement and Documents, the Applicants/Defendants were proceeded ex-parte.

2. The above-said portion given in italics and underlined by me does not form part of the original application moved by the appellants before the

trial court. This sentence is conspicuously missing from the trial court record. The learned Counsel for the respondent vehemently argued that this

new plea has been raised unauthorisedly, illegally and without the permission of the court in order to procure a favorable order. On the other hand,

counsel for the appellants submitted that, although, his signatures appear under his endorsement ""true copy"", yet, whatever was given to him by the

appellants, he had submitted the same before the trial court.

3. The appellants also filed an application u/s 5 of the Limitation Act. This is a one page application where no attempt was made to explain the

delay. On the contrary, in the prayer clause, it was mentioned that the delay, if any, be condoned in filing the application under Order 9 Rule 13

CPC.

4. I have heard the learned Counsel for the parties. The learned Counsel for the appellants vehemently argued that the appellants had already

deposited the entire decretal amount and that they should be given an opportunity of being heard. He also pointed out that the appellants had

already made the payment to the respondent and for the second time, appellants had to deposit the decretal amount with this Court. He pointed

out that under these circumstances ex parte decree should be set aside and an opportunity of being heard be granted in favor of the appellants. In

order to embolden his case, counsel for the appellants has cited authorities reported in Collector, Land Acquisition, Anantnag and Another Vs.

Mst. Katiji and Others, , N. Balakrishnan Vs. M. Krishnamurthy, , State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr. with State of

Bihar and Others Vs. Kameshwar Prasad Singh and Another, , Bharat Singh and Others Vs. Narender Kumar and Others, , M/s. Gobind

Parshad Jagdish Parshad Vs. Shri Hari Shankar and Others, , Dharshan Lal Dhuper Vs. Smt. Motia Rani and Others, , Delhi Development

Authority Vs. Bhasin Associates, and Shri Sultan Singh (since deceased now represented by Mr. Jitender Kumar Jain) Vs. Mrs. Raj Rani and

Another, .

5. For the following reasons, I find no force in these arguments. It is clear that the appellants have no qualms in playing fast and loose even with the

High Court. They have not come to the court with clean hands. They tried to take the court for a ride knowing fully well that they have not set up

any sufficient cause for condensation of delay. They tried to include a fresh ground after filing the appeal in this Court. On that account alone, the

appeal is liable to be dismissed. The appellants as well as his counsel have committed those acts which border the Contempt of Courts Act. It was

the bounden duty of the Advocate to find out whether he was signing the true copies or not. He cannot wriggle out of the responsibility by merely

stating that he had filed those documents which were furnished to him by the appellants. Copy of this order be sent to the Bar Council of India for

information and action.

6. For such type of people the Supreme Court of India in the judgment titled as S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead)

by L.Rs. and others, , opined as under: The principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an

engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the

court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers,

tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-

gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be

summarily thrown out at any stage of the litigation.

7. Counsel for the appellants admitted that no action was taken against the advocate. No reason or sufficient cause finds place in the above-said

applications. Mere non-appearance of the advocate without any rhyme or reason does not constitute sufficient cause in terms of Section 5 of the

Limitation Act.

8. For the purpose of condensation of delay, there must be some cause which can be termed as ""sufficient cause"". condensation of delay cannot be

allowed only because the delay is unintentional and there are sufficient attending circumstances to bolster up the same. Crux of the problem is as to

whether there is some plausible and reasonable Explanation given by the appellant in his application for the condensation of delay caused in

preferring the appeal and that the impugned order is liable to be interfered with on the ground that it is perverse or patently erroneous. There

should be some extenuating circumstances justifying the condensation of delay u/s 5 of the Limitation Act. There must be some compelling reasons

for the court to condone the delay.

9. In a recent case reported in Sow. Kamalbai Shrimal and Narsaiyya Shrimal Vs. Ganpat Gavare, , it was held,

15. The expression ""sufficient cause"" can not be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would

defeat the very purpose of Section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of

delay condensation. I do not find any such ""sufficient cause"" stated in the application and as such no interference in the impugned order is called

for.

Similar view was taken by the two Division Benches of this Court in Municipal Corporation of Delhi Vs. Satish Kumar, and LPA 2668/2005,

decided on 12.12.2005 titled as Union of India (UOI) v. Kameshwar Dubey.

10. Further, in Raghunath Singh and Ors. v. Chander Krishan Mahajan and Anr. 1993 RLR (2) it was held by the Punjab and Haryana High

Court that no indulgence can be shown as the party had been negligent and inactive in pursuing the matter.

11. In Mata Din Vs. A. Narayanan, , it was held,

The law is settled that mistake of Counsel may in certain circumstances be taken into account in condoning delay although there is no general

proposition that mistake of Counsel by itself is always bona fide or was merely devise to cover an ulterior purpose such as laches on the part of the

litigant or an attempt to save limitation in an underhand way.

12. In view of the discussion above, I come to the conclusion that the appeal is without merit. FAO Nos. 129-130/2005 are, accordingly,

dismissed with costs. The advocate fee''s is fixed at Rs. 10,000/-.CM No. 6836/2005 also stands dismissed. The trial court record along with a

copy of this judgment be sent back forthwith.