

Court No. - 19

Case :- WRIT – B No. 303 of 2022

Petitioner :- Ashok Singh and 3 others

Respondent :- State of U.P. and 5 others

Counsel for Petitioner :- Anup Kumar Srivastava, Dharmendra Prasad

Counsel for Respondent :- C.S.C., Jamwant Maurya, Krishna Kant Singh

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard Sri Anup Kumar Srivastava, learned counsel for the petitioners, Sri J.P.N. Raj, learned Additional Chief Standing Counsel appearing for the State-respondents, Sri Deena Nath, holding brief of Sri Jamwant Maurya, learned counsel for the respondent nos. 3, 4 and 5 and Sri Krishna Kant Singh, learned counsel appearing for the respondent no.6.

2. The present petition has been filed seeking to raise a challenge to the order dated 10.08.2021 passed by the Board of Revenue, U.P. at Allahabad in Case No. Rev/06/2008-2009, Computerized Case No. AL2008183499956, under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act, 1950¹ as well as order dated 22.11.2021 passed in Case No. Rec/1828/2021, Computerized Case No.AL20211834001828 under Section 333 of the Act.

3. It is pointed out that consequent to the death of the sole revisionist on 26.10.2011, a substitution application dated 23.11.2015 was moved on behalf of the petitioners i.e. legal heirs and representatives of the deceased-revisionist along with an application seeking condonation of delay. The said application was rejected by means of an order dated 10.08.2021 assigning the reason

1 the Act

that the substitution application had been filed with a delay and that steps had not been taken for issuance of notice pursuant to an order passed with regard to the same.

4. It is further pointed out that a recall application against the aforestated order was moved by the petitioners wherein it was submitted that the applicants i.e. legal heirs and representatives of the deceased-revisionist were already represented by their counsel whose vakalatnama was on record and the contesting respondent nos. 1 and 3 were also represented through their counsel whose vakalatnama was also on record. The recall application was also dismissed by the Board of Revenue in terms of an order dated 22.11.2021 reiterating the reasons that the substitution application was filed with delay and that steps were not taken for issuance of notice pursuant to the order passed in regard to the same.

5. On the point of delay in filing the substitution application, learned counsel for the petitioners has submitted that the reasons for the same were fully explained in the affidavit filed in support of the delay condonation application. It is pointed out that the affidavit contained a clear assertion that the applicants were not aware with regard to the pendency of the said case as the *pairvi* of the revision was being done by their father, Sobaran Singh. It was further averred that the applicants became aware of the pendency of the revision for the first time in the year 2015 upon receiving a communication from the counsel, which was addressed in the name of Sobaran Singh, their deceased father, and soon thereafter they sought legal advice and filed the substitution application along with an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay.

6. It is accordingly submitted that the delay in filing the restoration application having been sufficiently explained and there

being no want of bonafides on the part of the petitioners, the Court ought to have adopted a liberal approach and granted condonation of delay.

7. The manner of exercising discretion in matters relating to condonation of delay is fairly well settled and it has been consistently held that while exercising discretion in such matters, the words “sufficient cause” under Section 5 of The Limitation Act, 1963, should be construed in a liberal manner and in the absence of anything showing malafide or deliberate delay as dilatory tactics, the Court should normally condone the delay.

8. The manner of exercising discretion by Courts in matters relating to condonation of delay was subject matter of consideration in **N. Balakrishnan Vs. M. Krishnamurthy**² wherein it was observed as under -:

“9. 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 a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation

2 (1998) 7 SCC 123

fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. 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.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575 and *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366 .”

9. The question as to what would be held to be “sufficient cause” while considering an application seeking condonation of delay again came up for consideration in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others**³, wherein upon considering the obligation of the Court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation, the principles to be applied were summarized. The observations made in the judgment in this regard are as follows -:

“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.

3 (2013) 12 SCC 649

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."

10. Applying the aforesaid principles to the facts of the present case, it would be seen that the affidavit filed in support of application seeking condonation of delay spelt out the reasons for the delay in filing the substitution application and the reasons specified in that regard could not be held to be insufficient and no want of bonafides could have been imputed to the petitioners.

11. The order dated 10.08.2021 passed by the respondent No.2 does not assign any cogent reason which may have persuaded the

Court not to accept the explanation furnished by the petitioners and to reject the application seeking condonation of delay and consequently to dismiss the revision as having been abated.

12. The subsequent order dated 22.11.2021 on the recall application also does not accord any consideration to the reasons which were furnished by the petitioners in support of the delay condonation application.

13. On the question with regard to taking steps pursuant to the order directing issuance of notice, it has been pointed out that the applicants i.e. legal heirs and representatives of the deceased-revisionist were already represented through their counsel and the vakalatnama of their counsel was on record. The contesting respondents were also represented through their counsel whose vakalatnama was also on record. The recall application was also dismissed by the Board of Revenue in terms of an order dated 22.11.2021 reiterating the reasons that the substitution application was filed with delay and that steps were not taken for issuance of notice pursuant to the order passed in regard to the same.

14. It is urged on behalf of the petitioners that the rejection of the revision on the ground of not taking steps is based on hyper technical reasoning and would be legally unsustainable.

15. In this regard, this Court may reiterate the proposition that rules of procedure are the handmaid of the justice and no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. It would be apt to refer to the observations made in **The State of Punjab and another Vs.**

Shamlal Murari and another⁴, wherein it was observed as follows :-

"...processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice..if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum..."

16. Learned counsel appearing for the respondents has not disputed the fact that in matters relating to condonation of delay the court has to adopt a liberal approach and in a case where the delay has been sufficiently explained by giving adequate reasons the application ought not to be rejected on some hyper technical reasoning. Learned counsel also does not dispute that once the parties were duly represented through their counsel the revision ought not to have been dismissed for not taking steps for issuance of notice.

17. Having regard to the aforestated facts and circumstances and looking to the interest of justice, the impugned orders dated 10.08.2021 and 22.11.2021 are set aside and the matter is remitted to the Board of Revenue, U.P. at Allahabad for passing of a fresh order after granting due opportunity to the parties concerned.

18. The writ petition stands **allowed** in the manner as indicated above.

19. The original records received from the Board of Revenue, U.P. at Allahabad, through the Standing Counsel appearing for the State respondents, shall be returned forthwith.

Order Date :- 12.05.2022
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(Dr. Y.K. Srivastava, J.)

⁴ (1976) 1 SCC 719