



2024/KER/10965

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 14TH DAY OF FEBRUARY 2024 / 25TH MAGHA, 1945

RSA NO. 144 OF 2023

AGAINST THE ORDER IN I.A.NO.1/2021 IN AS NO.101/2021 AND THE DECREE
AND JUDGMENT IN AS 101/2021 OF ADDITIONAL DISTRICT COURT-V, PALAKKAD
AGAINST THE DECREE AND JUDGMENT DATED 21.12.2017 IN OS 336/2005 OF
ADDITIONAL MUNSIF COURT, PALAKKAD

APPELLANTS/APPELLANTS/DEFENDANTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR
PALAKKAD, PIN - 678001
- 2 THE TAHSILDAR
TALUK OFFICE, PALAKKAD,
PIN - 678001
- 3 THE RESURVEY SUPERINTENDENT
OTTAPPALAM, PIN - 679101
BY ADV SRI.DENNY K DEVASSY, SR.GOVERNMENT PLEADER

RESPONDENT/RESPONDENT/PLAINTIFF:

K ARAVINDAKSHAN PILLAI
AGED 61 YEARS
S/O KRISHNA PILLAI , THOTTAPURA ,
MALAMPUZHA-1 VILLAGE , PALAKKAD, PIN - 678651
BY ADVS.
P.B.SUBRAMANYAN
P.B.KRISHNAN (K/1193/1994)
SABU GEORGE (K/000711/1998)
MANU VYASAN PETER (K/000652/2013)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR HEARING ON
07.02.2024, THE COURT ON 14.02.2024 DELIVERED THE FOLLOWING:



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JUDGMENT

Dated this the 14th day of February, 2024

The State of Kerala represented by the District Collector, Palakkad and others are the appellants, who are the defendants in O.S.No.336/2005 on the files of the Additional Munsiff's Court, Palakkad, in this regular second appeal filed under Section 100 read with Order XLII Rule 1 of the Code of Civil Procedure, 1908. The sole respondent herein is the original plaintiff.

2. Heard the learned Government Pleader appearing for the appellants and the learned Senior Counsel appearing for the respondent in detail.

3. I shall refer the parties in this regular second appeal as 'plaintiff' and 'defendants' for convenience.

4. On hearing both sides, the following substantial questions of law raised and the appeal is admitted:



1. *Whether the appellants herein established 'sufficient cause' to condone delay in filing A.S.No.101/2021 before the District Court, Palakkad, as contended in I.A.No.1/2021 in the said appeal, within the mandate of Section 5 of the Limitation Act ?*
2. *While considering the impact of Section 5 of the Limitation Act, any concession or leeway to be provided to the State where the laches of the officials to secure unholy gains are apparent?*

5. The learned Government Pleader, appearing for the State, would submit that admittedly, the first appeal was filed along with I.A.No.1/2021 to condone delay of 1427 days. According to the learned Government Pleader, the reasons for the delay are illustrated in the affidavit in support of the petition. It is pointed out that the present appellant, Tahsildar (Land Records), Palakkad, took charge on 18.06.2020 and there occurred some delay and the delay was not willful and deliberate, and the same was the result of the incorrect



appreciation of facts from the records made available by the officials concerned. Accordingly, the learned Government Pleader pressed for remanding the matter before the first appellate court, after condoning the delay, by allowing I.A.No.1/2021, for hearing the appeal on merits.

6. The learned Senior counsel appearing for the plaintiff vehemently opposed condonation of delay as well as any order upsetting the finding of the first appellate court as well as the trial court in this appeal, mainly canvassing the lethargy throughout the proceedings on the part of the appellants by pointing out sequence of events starting from 28.07.2007 to 10.01.2023. The prime argument at the instance of the learned Senior counsel is that I.A.No.1/2021 had been filed as on 15.12.2021 and about 10 months before, exactly on 24.02.2021, the second appellant filed counter affidavit in E.P.No.143/2018 vide E.A.No.68/2021 and also filed petition to re-call the warrant issued against him by the execution court while proceeding to execute the



decree in E.P.No.143/2018.

7. When the recent decision of the Apex Court granting leeway to the Government in the matter of delay is pointed out, the learned Senior counsel bona fide placed the said decision in **Sheo Raj Singh (Deceased) through legal representatives and Others v. Union of India and Another**, reported in **(2023) 10 SCC 531** and referred the earlier decisions considered by the Apex Court therein, with particular mention to the decision in **University of Delhi v. Union of India**, reported in **(2020) 13 SCC 745** and also the decision in **State of Madhya Pradesh and Others v. Bherulal**, reported in **(2020) 10 SCC 654**.

8. On perusal of the above decision, the Apex Court considered challenge against condonation of delay of 479 days in filing an appeal against a reference under Section 18 of the Land Acquisition Act, 1894, at the instance of the Union of India. In the said case, the High Court condoned the delay and the same was challenged before the Apex Court.



The Apex Court justified condonation of delay after referring the three Bench decision in **University of Delhi's** case (*supra*) and set out principles governing consideration of the expression 'sufficient cause' and in paragraph 35, the principles have been summarised as under:

“35.1. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.

35.2. The expression "sufficient cause" is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.

35.3. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.



35.4. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

35.5. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.”

9. It was observed in paragraph 41 of the decision in

Sheo Raj's case (*supra*) as under:

“As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower



court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.”

10. The learned Senior counsel has given much emphasis to paragraph 5 of the decision in **State of Madhya Pradesh and Others v. Bherulal's** case (*supra*) and the same as under:

“5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.”

11. Whereas it is submitted by the learned Government Pleader that, on merits, the appellants have a good case to argue before the first appellate court and meritorious disposal of the first appeal may be facilitated by



allowing the delay condonation petition and remanding the matter before the first appellate court. The learned Government Pleader also placed a Division Bench decision of this Court in **Abdul Khader v. Rapheal T.George**, reported in **2023 KHC 9094**, where this Court dealt with matters to be considered under Section 5 of the Limitation Act and held as under:

“It is well settled that the Law of Limitation is founded on public policy to ensure that the parties to a litigation do not resort to dilatory tactics and seek legal remedy without delay. In an application filed under S.5 of the Limitation Act, the court has to condone the delay if sufficient cause is shown. Adopting a liberal approach in condoning the delay is one of the guiding principles, but such liberal approach cannot be equated with a licence to approach the court-at-will disregarding the time limit fixed by the relevant statute. The acts of negligence or inaction on the part of a litigant do not constitute sufficient cause for condonation of delay. Therefore, in the matter of condonation



of delay, sufficient cause is required to be shown, thereby explaining the sequence of events and the circumstances that led to the delay.”

12. Insofar as the question as to condonation of delay by resorting to Section 5 of the Limitation Act is concerned, delay can be condoned if 'sufficient cause' is shown and the approach of the courts should be liberal guided by legal principles. At the same time, dilatory tactics, if borne out from materials, shall be treated sternly and liberal approach cannot be extended to those persons. However, it is noticed that the State and its instrumentalities used to file litigations, including appeals, second appeals, revisions, etc., with prayer to condone delay/long delay and in almost all the cases of the said nature, except a few, reading between the lines, the hands of the hidden forces, who had worked in preventing timely filing of litigations, could be decipherable. There may be deliberate or intentional omissions so as to go



in hands with the opposite parties with ulterior motives. The same practically would become detrimental and causing loss to public property and public money. So, if delay is sought to be condoned by the State and its instrumentalities, wherein hidden forces and materials of such nature are apparent, in order to prevent timely filing of litigations, the same also to be taken note of, as held by the Apex Court in **Sheo Raj's case** (*supra*). Therefore, at times when the materials would show that hidden forces in the form of officials behind the curtain meddled in not filing the litigations within time or without much delay, as part of liberal and justice-oriented approach by the courts, some sort of leeway or concession could be provided to the State, in order to protect the interest of the public at large and to avoid unlawful enrichment by the opposite side.

13. The learned Senior counsel for the plaintiff has given much emphasis to the Apex Court decision in **State of**



Madhya Pradesh and Others V. Bherulal (*supra*) to contend that if there is merit in the case, bar of limitation is to be given a go-by, and when the case lacks merit, the bar of limitation is to be shut out.

14. However, in **State of Madhya Pradesh and Others V. Bherulal** (*supra*), though the Apex Court observed so, it was held that the same did not, of course, take away the jurisdiction of the court in an appropriate case to condone the delay. Further, the said decision in no way laid a ratio that in cases having merits, condonation of delay is either mandatory or in deviation of the statutory sanction under Section 5 of the Limitation Act.

15. The learned Senior counsel argued a little on the merits of the matter and the ordeals suffered by the plaintiff starting from 2005 onwards to address his grievance, wherein the lethargic attitude on the part of the defendants stands in the way of having a quietus to the lis.



16. Whereas it is submitted by the learned Government Pleader that in this case, the identification of property was done at the instance of the municipal surveyor and the property was not properly identified with the old survey number. Instead, the property was identified on the basis of the re-survey number and in the re-survey, there was mistake. Therefore, the first appeal requires consideration on merits by the first appellate court, for which the delay is to be condoned in the case at hand where delay on the part of the officials in taking follow up steps is cited as the reason for condonation of delay.

17. The inevitable conclusion of the above discussion is that since the State is the appellant and the delay is the outcome of deficiency and derelictions on the part of the officials in acting in time, some concession or leeway to be given to the Government. Accordingly, the delay petition I.A.No.1/2021 stands allowed, subject to payment of cost of



Rs.5,000/- (Rupees five thousand only) to the plaintiff within a period of four weeks by the defendants from the date of appearance of the parties before the first appellate court and accordingly, the order in I.A.No.1/2021 stands set aside and I.A.No.1/2021 stands allowed. Consequently, dismissal of the first appeal also stands set aside.

18. In the result, this regular second appeal stands allowed and the matter remitted back to the first appellate court for hearing the appeal on merits, subject to payment of cost, as ordered herein above.

19. The first appellate court is directed to hear and dispose of the appeal within a period of one month from the date of payment of cost, if the cost is paid as directed and on failure to pay the cost, the delay petition I.A.No.1/2021 will stand dismissed. If so, the dismissal of the first appeal by the first appellate court also will stand revived.

20. Before parting, as an *addendum*, this Court is



inclined to look into the unfortunate consequences of delay on the part of the State Officials in conducting the litigations timely and properly. It is shocking to note that there is callous negligence or lackadaisical attitude on the part of the officials of the Government to conduct litigations, timely and properly, to protect the interest of the State, in fact, the property and money of the public at large, though they are duty bound to be vigilant in this regard. Invariably, when State is a party, the other party would succeed in the litigations mainly because of the laches on the part of the officials, though on merits State has good reason to win the cases. Such instances noted with extreme displeasure, utmost anxiety and seriousness and there should be some effective mechanism to realize the loss caused to the Government due to inaction and dereliction by the officials. Therefore, the appropriate Governments are hereby requested to consider enactment of an exhaustive legislation to deal with this menace to avoid losing government property



and money/ public property and money due to the lethargy on the part of the officials, without much delay, adverting to the interest of the public at large.

21. The parties are directed to appear before the first appellate court on 26.02.2024.

22. All interlocutory orders stand vacated and all interlocutory applications pending in this regular second appeal stand dismissed.

Registry is directed to forward a copy of this judgment to the trial court and the first appellate court for information and compliance.

Registry is also directed to forward copies of this judgment to the Law Secretary to the Union of India and the Chief Secretary, State of Kerala for information and further action, if any.

**Sd/-
A. BADHARUDEEN
JUDGE**



2024/KER/10965

RSA NO.144 OF 2023

17

APPENDIX OF RSA 144/2023

PETITIONER ANNEXURES

Annexure1	ANNEXURE	A1-DELAY	CONDONATION
	PETITION AND	AFFIDAVIT	FILED IN AS
	NO. 101/2021		