

Court No. - 93

Case :- CRIMINAL REVISION DEFECTIVE No. - 273 of 2016

Revisionist :- Laxman Prashad

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Anurag Pathak,Rajesh Kumar Pandey

Counsel for Opposite Party :- G.A.,Shri Prakash Dwivedi

Hon'ble Shamim Ahmed,J.

(Criminal Misc. Delay Condonation Application No. 135146 of 2016)

1. This revision has been filed challenging the judgment and order dated 21.10.2015 passed by Principal Judge, Family Court, Mirzapur in Misc. Case No. 39 of 2014, by which application of revisionist filed under Section 126(2) Cr.P.C. was rejected, which was preferred by the revisionist against the judgment and order dated 01.01.2014 passed by Principal Judge, Family Court, Mirzapur in Misc. Case No. 102 of 2013, Smt. Meera Devi Vs. Laxman Prasad, whereby the court below has allowed the application under Section 125 Cr.P.C. moved on behalf of wife (opposite party No. 2 herein) and directed the revisionist to pay maintenance allowance to his wife at the rate of Rs. 5,000/- per month from the date of application and remaining balance amount be paid in four equal installments in every three months within a period of one year.
2. Heard learned counsel for the revisionist and learned counsel for the opposite party no.2 and learned A.G.A. for the State.
3. This revision is barred by limitation and has been filed with a delay of 756 days.
4. Learned counsel for the revisionist submits that the revisionist is husband and his wife-opposite party no.2 filed an application under Section 125 of Cr.P.C., which was allowed by the Principal Judge, Family Court, Mirzapur vide its order dated 01.01.2014 and awarded maintenance at the rate of Rs. 5000/- per month from the date of application i.e. 28.07.2006. Against the said order the revisionist filed an application under Section 126(2) Cr.P.C. which was rejected by the learned Principal Judge, Family Court, Mirzapur on 21.10.2015. He further submits that the revisionist

reached Allahabad on 24.03.2016 and thereafter, again went back to Mirzapur for taking some relevant papers and finally came to Allahabad on 11.04.2016 and after preparing this revision, filed the same along with application under Section 5 of the Limitation Act.

5. The explanation given in affidavit accompanying delay condonation application filed under Section 5 of Limitation Act, 1963 is neither acceptable nor trustworthy.

6. The expression “sufficient cause” in Section 5 of 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 Vs. Katiji, 1987(2) SCC 107**, 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.

7. In **P.K. Ramachandran Vs. State of Kerala, AIR 1998 SC 2276** 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.”

8. 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 reipublicae 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.

9. 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.

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

11. In **Shakuntala Devi Jain Vs. Kuntal Kumari, AIR 1969 SC 575** a three Judges 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.

12. The Privy Council in **Brij Indar Singh Vs. Kanshi Ram ILR (1918) 45 Cal 94** 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, AIR 2005 SC 2191**.

13. In **Vedabai @ Vaijyanatabai Baburao Vs. Shantaram Baburao Patil and others, JT 2001(5) SC 608** the Court said that under Section 5 of 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.

14. In **Pundlik Jalam Patil (dead) by LRS. Vs. Executive Engineer, Jalgaon Medium Project and Anr. (2008) 17 SCC 448**, in para 17 of the judgment, the Court said :

“...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights.”

15. In **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, 2012 (5) SCC 157**, in para 18 of the judgment, the Court said as under:

“What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would

largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.”

16. In my view, the kind of explanation rendered herein does not satisfy 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. On the contrary, I find that here is a case which shows a complete careless and reckless long delay on the part of revisionist which has remain 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.

17. In the result, the application deserves to be dismissed.

18. Accordingly, the application for condonation application is hereby rejected.

Order Date :- 17.05.2022

Arvind

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Hon'ble Shamim Ahmed,J.

Since delay condonation application No. 135146 of 2016 has been rejected by this Court vide order of date, therefore, the present revision is also dismissed as barred by limitation.

Order Date :- 17.05.2022

Arvind