

Court No. - 6

Case :- WRIT - B No. - 302 of 2021

Petitioner :- Ganga Sahay And 2 Others

Respondent :- Deputy Director Of Consolidation And 14 Others

Counsel for Petitioner :- Rajendra Kumar Yadav, Suman Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot, J.

1. Petitioners have assailed the order dated 09.09.2016. The petitioners were not parties in the proceedings before the courts below. The petitioners claim inheritance from one Ram Avtar (since deceased) who had allegedly executed a Will deed in favour of the petitioners. The authenticity of the Will deed and rights of petitioners as successors have first to be approved by the competent court before the petitioners can maintain any petition on behalf of the deceased Ram Avtar. It could not be pointed out what heritable rights of the petitioners devolving from Ram Avtar (since deceased) are being canvassed before this Court.

2. Learned Standing Counsel raises a preliminary objection to the maintainability of the writ petition. He submits that the writ petition is barred by delay and laches and the petitioner has approached this Court after a delay of more than four years.

3. Clearly, the writ petition is barred by delay and laches. The petitioner has approached this Court after more than four years. There is no satisfactory explanation for laches and the delay in filing the writ petition on the part of the petitioner. Further third party rights have been entrenched. The law has long set its face against indolent litigants who approach this Court after a long delay.

4. The courts have consistently observed that delay and laches on part of the litigant will disentitle him to any relief. In this regard the Hon'ble Supreme Court has settled the law with clarity and observed it with consistency.

5. The line of authorities on this point are consistent and long. The discussion will benefit from the authorities in point.

6. The Hon'ble Supreme Court in **R & M Trust Vs. Koramangala Residents Vigilance Group and others** reported at **2005 (3) SCC 91** held thus:-

"There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third party interest created on account of delay. Even otherwise also why Court should come to rescue of person who is not vigilant of his rights."

7. The Hon'ble Supreme Court in **Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service** reported at **AIR 1969 SC 329** held thus:-

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his

conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

8. A similar sentiment was echoed by the Hon'ble Supreme Court in **Shiv Dass Vs. Union of India** reported at **2007 (9) SCC 274**, the Hon'ble Supreme Court opined as under:-

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

9. When the issue of delay and laches came up before the Hon'ble Supreme Court in **Shankara Co-op. Housing Society Ltd. Vs. M. Prabhakar and ors.** reported at **2011 (5) SCC 607**, Hon'ble Supreme Court reiterated settled position of law and confirmed the well established criteria which has to be considered before exercise of discretion under Article 226 of the Constitution of India. The relevant portion is extracted herein below:-

"53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the Petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the Petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the Petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay."

10. The Hon'ble Supreme Court also noticed the ingenuous devices adopted by unscrupulous litigants to tide over the delay and laches on part of such litigants. One such commonly used device is by filing a representation to the authorities after a long delay. Such litigants then approach the Court with an innocuous prayer to decide the representation. Once such representation is decided in compliance of orders of the court, it is claimed that a fresh cause of action has arisen. Stale wine does not become fresh in a new bottle. The Hon'ble Supreme

Court saw through the designs of such litigants and foiled their intent in no uncertain terms.

11. The Hon'ble Supreme Court considered this issue in **C. Jacob Vs. Director of Geology & Min. Indus. Est. and another** reported at **2008 (10) SCC 115**. The law laid down by the Hon'ble Supreme Court would guide the fate of the case. The relevant extract of the judgment is reproduced hereunder for ease of reference :-

"6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

12. A similar view was taken by the Hon'ble Supreme Court in **S.S. Rathore Vs. State of Madhya Pradesh** reported at **1989 (4) SCC 582**. The relevant extract of the judgment is reproduced hereunder for ease of reference :-

"It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

13. Law has long set its face against delay in approaching the court. The courts have consistently declined to condone the delay and denied relief to litigants who are guilty of laches. Litigants who are in long slumber and not vigilant about their rights are discouraged by the courts. Belated claims are rejected at the threshold. Rip Van Winkles have a place in literature, but not in law.

14. All this is done on the foot of the rule of delay and laches. Statutes of

limitation are ordained by the legislature, rule of laches was evolved by the courts. Sources of the law differ but the purpose is congruent. Statutes of limitation and the law of delay and laches are rules of repose.

15. The rule of laches and delay is founded on sound policy and is supported by good authority. The rule of laches and delay is employed by the courts as a tool for efficient administration of justice and a bulwark against abuse of process of courts.

16. Some elements of public policy and realities of administration of justice may now be considered.

17. While indolent litigants revel in inactivity, the cycle of life moves on. New realities come into existence. Oblivious to the claims of the litigants, parties order their lives and institutions their affairs to the new realities. In case claims filed after inordinate delay are entertained by courts, lives and affairs of such individuals and institutions would be in a disarray for no fault of theirs. Their lives and affairs would be clouded with uncertainty and they would face prospects of long and fruitless litigation.

18. The delay would entrench independent third party rights, which cannot be dislodged. The deposit of subsequent events obscures the original claim and alters the cause itself. The refusal to permit agitation of stale claims is based on the principle of acquiescence. In certain situations, the party by its failure to raise the claim in time waives its right to assert it after long delay.

19. The rule of delay and laches by preventing the assertion of belated claims puts to final rest long dormant claims. This policy of litigative repose, creates certainty in legal relations and curtails fruitless litigation. It ensures that the administration of justice is not clogged by pointless litigation.

20. The above stated position of law on the question of delay and laches on part of the petitioners, controls the facts of the case. There is no satisfactory explanation of the delay in the writ petition. The explanation for laches is self serving and lacks credibility is accordingly rejected. The writ petition is barred by delay and laches and is not liable to be entertained.

21. The writ petition is dismissed.

Order Date :- 18.3.2021

Pravin