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Court : Delhi

Decided On : Oct-09-2015

Judge : Vipin Sanghi

Appeal No. : RSA No. 352 of 2014

Appellant : Satyawan

Respondent : UOI and Others

Judgement :

Vipin Sanghi, J. (Open Court):

1. The present second appeal is directed against the order dated 16.07.2014 passed by the learned Additional District Judge (Central-07), Tis Hazari Courts, Delhi in RCA No.79/2013. By the impugned order, the first appeal preferred by the appellant/plaintiff to assail the judgment and decree dated 12.08.2013 passed in the appellant's Suit No.1567/2006, has been dismissed as being barred by limitation. The application preferred by the appellant under Section 5 of the Limitation Act, 1963 to seek condonation of 98 days in filing the first appeal has been rejected as not disclosing sufficient cause to explain the delay.

2. The appellant/ plaintiff was enrolled in Central Industrial Security Force (CISF) as a Constable. He was charge-sheeted on the ground that he had left the Unit without prior approval and had not gone to Chandigarh as directed. A departmental inquiry followed, which found him guilty of misconduct. Accordingly,

he was dismissed from service.

3. The appellant then preferred the aforesaid suit to seek a declaration and consequential reliefs in respect of his dismissal from service. The Trial Court, namely the Senior Civil Judge-cum-Rent Controller (Central), Tis Hazari Courts, Delhi dismissed the suit vide judgment and decree dated 12.08.2013.

4. Along with the first appeal, the appellant filed an application to seek condonation of 98 days delay in preferring the said first appeal. The reason given for the delay in the said application was that after passing of the impugned judgment of the Trial Court, the appellant had been seeking legal opinion from various advocates to file the appeal. He also stated that he had not been keeping well. He stated that he had entrusted his file to the Clerk of an Advocate for preferring the appeal. However, the Clerk lost the file while the office was being shifted. Consequently, the appeal could not be preferred. The Clerk had not disclosed about the loss of the file either to the appellant, or the concerned Advocate in time. He also stated that when the appellant became aware that the appeal had not been preferred, since the file had been lost, he approached the Advocate directly, and finally, the file was traced out from the record. The aforesaid developments led to the delay of 98 days in filing the appeal.

5. The First Appellate Court, while rejecting the application seeking condonation of delay, observed that the appellant had not disclosed the name of the advocates he approached to obtain legal opinion and the dates when he had approached them. He also did not disclose the period when he remained unwell and the cause of his illness. He did not file documents in support of his illness. He did not disclose the name of the Advocate to whom he entrusted the file and the date of such entrustment. He also did not disclose the name of the Clerk, nor the address of the office which was being shifted. He also did not disclose the date when he came to know about the loss of his case file and when he approached the concerned counsel. He also did not disclose the date when the said file was traced out, and how. The First Appellate Court observed that the averments made in the application were vague in nature.

6. The submission of learned counsel for the appellant is that the approach of the First Appellate Court in dealing with the application under Section 5 of the Limitation Act was extremely narrow.

7. Learned counsel has placed reliance on two decisions of the Supreme Court in Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, (2002) 3 SCC 195; and S. Ganesharaju (Dead) Through LRs Vs. Narasamma (Dead) Through LRs and Others, (2013) 11 SCC 341, to submit that the trend of the Courts while dealing with matters of condonation of delay had tilted more towards condoning the delay and directing the parties to contest the matter on merits. Such technicalities have been given a go-bye. The expression sufficient cause not having been defined, the Courts have been left to exercise their discretion to come to the conclusion whether the circumstances exist which establish sufficient cause ?. The Courts have to see whether a party has acted with reasonable diligence, and has not been negligent and callous in the prosecution of the matter.

8. Learned counsel submits that there was no basis for the First Appellate Court to assume that the counsel in whose office the file got misplaced was some other counsel, and not the counsel by whom the said application and first appeal had been preferred. It had not been stated by the appellant that after the file was traced in the office of the counsel, he had changed the counsel, who had then filed the first appeal. In any event, even if there were any unanswered questions, the appellant could have been given an opportunity to file a better affidavit, rather than the dismissal of the application seeking condonation of delay being handed down by the First Appellate Court.

9. On the other hand, learned counsel for the respondent submits that the issue with regard to the dismissal of the application under Section 5 of the Limitation Act does not raise a substantial question of law for consideration in a regular second appeal. In this regard, he places reliance on the judgment of the Division Bench of the High Court of Madhya Pradesh in Ajitsingh and Another Vs. Bhagwanlal Master and Others, AIR 1989 MP 302, wherein the Division Bench has observed that when the lower Appellate Court exercises its jurisdiction to dismiss the appeal

as time-barred under new Rule 3A of Order 41 CPC, it merely decides the question as to whether the appellant had sufficient cause for not presenting the appeal within the period prescribed by law of limitation, and that question evidently would be a pure question of facts. The Division Bench observed that if a second appeal is allowed, that would tantamount to allowing deliberately the workload of the High Court to increase illogically and irrationally. The Division Bench further observed that there would be no occasion for the High court in such a case to deal with any question of law.

10. Having heard learned counsels, perused the impugned order, the judgments of the Supreme Court relied upon by the appellant as well as the judgment of the Division Bench of the High Court of Madhya Pradesh relied upon by learned counsel for the respondent, I am inclined to allow the present appeal.

11. The observations made by the Division Bench of the High Court of Madhya Pradesh with regard to the nature of the question involved in a second appeal " which arises on account of dismissal of the first appeal as being barred by limitation under Rule 3A of Order XLI CPC, in my view, are observations which cannot be said to constitute the ratio of the said decision. There is no discussion found in the said judgment, on the basis of which it could be concluded that in every such case, the question that would arise of consideration would be only a pure question/issue of fact. The proposition stated by the Division Bench, with due respect, appears to be very broadly stated. It cannot be said that in every case the dismissal of the application under Order XLI Rule 3A read with Section 5 of the Limitation Act would raise only a question of fact, with regard to the cause for the delay being sufficient, or not.

12. The present case is a live example where the question arising in the present appeal cannot be said to be merely a question of fact. It raises a question of law, and that too, a substantial question of law, since it concerns the approach that should be adopted by the First Appellate Court in dealing with the appellant's application under Section 5 read with Order XLI Rule 3A CPC. The manner in which the discretion is exercised by the Court, while dealing with an application under Section 5 of the Limitation Act, read with Order 41 Rule 3A CPC may raise

an substantial question of law, if the exercise of that discretion is not founded upon correct principles. If the approach of the First Appellate Court in dealing with the said application is not in accordance with law, the same would certainly raise a substantial question of law for consideration of this Court.

13. With greatest respect, I cannot agree with the observations made by the Hon'ble Division Bench of the High Court of Madhya Pradesh that to allow such appeals would lead to increase, illogically and irrationally, the workload of the High Court. The Courts of justice are meant to dispense justice to parties wherever a good cause is shown, and merely on account of the fact that inflow of cases may increase, the Courts would not shun their responsibility and shut out even deserving cases.

14. The approach of the First Appellate Court has been myopic in dealing with the application of the appellant under Section 5 read with Order XLI Rule 3A CPC. The First Appellate Court has assumed that the appellant had approached the Clerk of some other counsel, or some other counsel, or that the file had been misplaced in the office of some other counsel. The appellant did not claim that after the file had been traced in the office of the counsel, he had approached some other counsel to file the first appeal. Therefore, no fault could be found with the appellant in not disclosing the name of the counsel, or the Clerk in his application.

15. In any event, even if there were unanswered questions which the Court desired the appellant to answer to be convinced that he was not callous in his approach to the Appellate Court, the Court should have granted an opportunity to the appellant to file a better affidavit. The valuable right of first appeal available to the plaintiff/ appellant, who had contested the suit for nearly 16 years, should not have been shut out on such a technicality. The delay of 98 days in preferring the first appeal could not be said to be so gross, as to per se lead the First Appellate Court to conclude that the appellant had been completely callous, or indifferent to his right to prefer the first appeal. The First Appellate Court should not have lost sight of the fact that the appellant had been dismissed from service while serving as a Constable in the year 1994, and for a person who has already been in litigation for 16 years, it may not have been possible to garner the resources to

prefer a first appeal very easily. The appellant had nothing to gain by delaying his approach to the Appellate Court. The same could not be said to be deliberate or calculated to serve any other objective. At the same time, the delay in filing the first appeal did not cause the respondent to suffer any prejudice. It is not that the respondent was waiting for the appellant to prefer an appeal, and the same not having been preferred in time, it has altered its position to its prejudice.

16. The Supreme Court in Ram Nath Sao @ Ram Nath Sahu (supra) observed in paragraphs 12 and 13 as follows:

12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

13. In view of the foregoing discussions, we are clearly of the opinion that on the facts of present case, Division Bench of the High Court was not justified in upholding order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted. ?

(Emphasis Supplied)

17. In this decision, the Supreme Court cited several earlier decisions, including the decision in N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123. In that case, the application filed to seek setting aside of the ex-parte decree was delayed by 883 days. The Supreme Court in the said decision observed as follows:

8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

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 untrammeled by the conclusion of the lower court.

10 x x x x x x x x x

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The timelimit 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.

18. In N. Balakrishnan (supra), the Supreme Court further observed:

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 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 up 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 (1969) 1 SCR 1006 and State of W.B. v. Administrator, Howrah Municipality (1972) 1 SCC 366.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses.

19. Similarly, in S. Ganesharaju (supra), the Supreme Court, inter alia, observed:

12. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show malafides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by. 13. The Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily. ?

(Emphasis Supplied)

20. The substantial question of law which arises in the present case has already been indicated in the earlier part of this judgment in para 12. The same is answered in favour of the appellant. For the aforesaid reasons, the present appeal is allowed and the impugned order is set aside. The appeal is remitted back to the First Appellate Court for hearing on merits. The parties shall appear before the First Appellate Court on 16.11.2015.

21. The present second appeal stands disposed of in the aforesaid terms.

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