

Pushpa Vs. The State of Karnataka and Others

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Court : Karnataka Dharwad

Decided On : Jun-15-2016

Judge : A.N. Venugopala Gowda

Appeal No. : Criminal Revision Petition No. 100100 of 2015

Appellant : Pushpa

Respondent : The State of Karnataka and Others

Judgement :

(Prayer: This Criminal Revision Petition is filed under Section 397 R/w Sec.401 of Cr.P.C. praying to call for records in Criminal Appeal No.162/2014 on the file of Prl. District and Sessions Judge, Belgaum and set aside the order dated 17.03.2015 made in Criminal Appeal No.162/2014 passed by the District and Sessions Judge, Belgaum as the same being not sustainable in law.)

1. The petitioner had filed CrI.Misc.No.20/2012 by invoking the provisions of PWDV Act, 2005 (for short, the Act). The JMFC II at Belgaum, allowed the petition in part and directed the respondent No.2 herein i.e., husband of the petitioner to pay maintenance of Rs.6,000/- p.m. and Rs.25,000/- as compensation and damages to the petitioner. The reliefs sought against the other respondents was rejected.

2. Feeling aggrieved, the petitioner filed an appeal under S.29 of the Act. There being delay of 78 days, I.A.1 was filed under S.5 of the Limitation Act for

condonation of the delay in filing the appeal. Statement of objections having been filed by respondents 2 to 4, the petitioner got herself examined as PW-1 and marked Exs.P1 and P2. No rebuttal evidence was placed on record by respondents 2 to 4. The Sessions Judge having dismissed I.A.1 and also the appeal vide order dated 17.03.2015, this Revision Petition was filed.

3. The petitioner pleaded in the Court below that the delay in filing the appeal was unintentional and bona fide. It was stated that her father developed coronary artery disease and was admitted at military hospital at Pune and was there till 11.08.2014 and thereafter, he underwent follow-up treatment till first week of November, 2014. It was submitted that she took care of her father and hence could not file the appeal within the period of limitation. Despite the respondents failure to show that there was any mala fides or the appellant/ petitioner having gained out of the delay, the Sessions Judge by adopting a pedantic approach and by merely reproducing the evidence and without appreciation of the case, refused to condone the delay.

4. Heard the learned advocates for the parties and perused the record. Points for consideration are:

(i) whether the impugned order is perverse?

(ii) Whether sufficient cause has been shown for condonation of the delay in filing the appeal before the Court below?

5. S.5 of the Limitation Act envisages the explanation of delay to the satisfaction of the Court. Discretion has been conferred upon Courts to excuse the delay particularly when a meritorious case is brought before the Court and mala fides on the part of the applicant in filing the appeal belatedly is not made out. sufficient cause used in S.5 of the Limitation Act is elastic enough to enable Court to apply the law in a manner which subserves ends of justice and that liberal approach should be adopted in condonation of short duration which becomes clear from the ratio of law laid down by the Apex Court vide COLLECTOR, LAND ACQUISITION, ANANTANG Vs. MST.KATIJI (1987) 2 SCC 107; N. BALAKRISHNAN Vs. M.KRISHNAMURTHY (1998) 7 SCC 123 And VEDABAI Vs. SHANTARAM

BABURAO PATIL (2001) 9 SCC 106; G. RAMEGOWDA (MAJOR) Vs. SPECIAL LAND ACQUISITION OFFICER, (1988) 2 SCC 142.

6. The petitioner's father having suffered heart attack and taken treatment as an in-patient vide Exs.P1 and P2 and the petitioner having taken care of him and the delay being only 78 days, a liberal view should have been taken.

7. In RAM NATH SAO Vs. GOBARDHAN SAO, (2002) 3 SCC 195, Apex Court has held as follows:

12. .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 fides 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 hypertechnical 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.

(emphasis supplied)

8. In IMPROVEMENT TRUST, LUDHIANA Vs. UJAGAR SINGH AND OTHER, (2010) 6 SCC 786, Apex Court has held as follows:

19. It is pertinent to point out that unless mala fides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it out on technicalities.

9. In S. GANESHARAJU (DEAD) THROUGH LRs. VS. NARASAMMA (DEAD) THROUGH LRs. AND OTHERS, (2013) 11 SCC 341, with regard to the construction to be placed on the word sufficient cause appearing in S.5 of the Limitation Act, the delay having been found to be 53 days, which was held as would not certainly fall in the category of exorbitant or inordinate delay, it has been held as follows:

8. ..If delay of 53 days is not condoned and the matter not heard on merits, then it would tantamount to rendering injustice to the appellants, who were seeking condonation of delay. Looking to short delay, as a routine, it should have been condoned and the matter should have been heard on merits.

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12. The expression sufficient cause as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides 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.

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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 matter 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

(emphasis supplied)

10. Evidence of Pw-1 shows sufficient cause for the marginal delay. The respondents have not shown any mala fides in petitioner not approaching the Court below within the period of limitation. There is no material brought on record by the respondents to hold that the delay is deliberate and that the appellant made gains thereby. The impugned order being unreasoned and against the settled principles of law is arbitrary and perverse.

In the result, petition is allowed and the impugned order is set aside. I.A.1 filed in CrI.A.No.162/2014 (FR No.CrI.A.160/14) is allowed and the delay condoned. CrI.A.162/2014 having not been decided on its merit, the same is restored to the file of the Dist. and Sessions Court at Belgaum, for consideration in accordance with law. The appeal be decided expeditiously and before 31.08.2016.

Both parties are directed to appear before the Court below on 02.07.2016 and receive further orders.

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