

The Managing Director, Apsrtc Vs. Laghshetty Leelavathi and ors.

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Court : Andhra Pradesh

Decided On : Jul-25-1995

Reported in : 1995(3)ALT79

Judge : S. Parvatha Rao and ;Neelam Sanjiva Reddy, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 173(1); [Limitation Act, 1963](#) - Sections 5

Appeal No. : Civil Miscellaneous Petition No. 5012 of 1995 in C.M.A. SR. No. 17173 of 1995

Appellant : The Managing Director, Apsrtc

Respondent : Laghshetty Leelavathi and ors.

Advocate for Def. : K. Raji Reddy, Adv.

Advocate for Pet/Ap. : Kota Bhaskar Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S. Parvatha Rao, J.

1. We do not find any sufficient cause for condoning the delay of 197 days in filing this appeal. Both in the affidavit filed in support of this C.M.P. for condoning the delay as well as in the reply affidavit dated 24-7-1995 filed by the Senior Law Officer of the Andhra Pradesh State Road Transport Corporation, it is admitted that certified copies of the judgment and the award of the learned District Judge, Medak at Sangareddy dated 7-2-1994 in O.P.No. 642 of 1992 were received on 14-6-1994 and that the same were sent to the Law Department of the Corporation on 26-7-1994 i.e., nearly six weeks after they were received. It is stated that the file was marked to the standing counsel by the Law Department on 29-7-1994 and that the standing counsel returned the file along with the draft grounds .only on 14-3-1995. There is nothing to substantiate this. No correspondence is referred to in the affidavits nor any copies of the same filed to establish when the papers were sent to the standing Counsel and when he returned it. No affidavit of the standing Counsel is filed explaining why the standing counsel delayed. What prevented the advocate from having the appeal filed within time is not stated. There is no explanation whatsoever why the officers of the Corporation kept quiet between 29-7-1994 to 14-3-1995 and nothing is stated as to what steps were taken to see that the grounds were readied in time for the appeal to be filed in time. In *Ajit Singh v. State of Gujarat*, : 1981 CriLJ293 . the Supreme Court observed as follows:

'Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be event or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay.'

Even assuming that the appeal was belatedly readied on 14-3-1995 there is unexplained delay even after that; there is no explanation why it took till 27-3-1995

to have the appeal filed. We have to observe that inordinate delay cannot be condoned in every case in a casual way for the mere asking and on the filing of some affidavit stating in a mechanical manner that the advocate took his own time heedless of the law of limitation or because the officers took their own time in corresponding interminably and that therefore there is sufficient cause.

2. In Govt. of A.P. v. Y.S. Parkash Rao, : (1982)2SCC385 a three Judges' Bench of the Supreme Court while refusing to condone a delay of 69 days under Section 5 of the limitation Act, 1963 held as follows:

'The application made in that behalf by the appellants stated the reason for delay to be a misunderstanding on the part of an officer of the Government who had been required by the counsel for the State to get a copy of the judgment of the High Court. It is said that officer thought that he was to wait till the High Court disposed of the question of the grant of certificate about the fitness of the case for appeal and that he, therefore, went on waiting, till the matter was finally disposed of by the High Court. Even though, the special leave petition was time barred by 69 days, no attempt was made by the appellant to put in an affidavit of the officer concerned. There is thus no material before the Court in support of the truth of the allegation which formed the reason for delay. We, therefore, need not go into the question as to whether such a reason would have been sufficient for us to condone the delay or not.'

In State of Gujarat v. Sayed Mohd. Bakir El Edross, : [1982]1SCR551 another three Judges' Bench of the Supreme Court refused to condone the delay of more than three months and a half holding that negligence on the part of the clerk of the appellant must be deemed to be that of the appellant, observing as follows:

'No sufficient cause, however, for the condonation of the delay is made out from any material on the record. As pointed out earlier, the clerk of the learned counsel for the appellant was served with a copy of the application dated 23rd February, 1979 on that date itself and no reason, good, bad or indifferent is assigned for the failure of that counsel right from the 20th February, 1979 to the 29th August, 1979 to move the Court till the 29th August, 1979 either for having the legal representatives of the deceased brought on the record or for having the abatement

set aside after it had taken place. His knowledge of the death of the respondent must be attributed to the appellant State also and his negligence in not moving the Court in time must be deemed to be that of the appellant.'

In that case the Supreme Court rejected the contention that the appellant had a strong case for acceptance of the appeal on merits and that the same should be regarded as a very good reason for the condonation of delay. The observations of a two Judges' Bench of the Supreme Court in *Collector, Land Acquisition, Anantnag v. Katiji*, : (1987)ILLJ500SC . have to be understood in the context of the facts of that particular case where a delay of 4 days was refused to be condoned by the Jammu and Kashmir High Court. But, it has to be noted that the Supreme Court has observed in that case that the fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant and that the doctrine of equality before law demanded that all litigants including the State as a litigant, were accorded the same treatment and that the law was administered in an even-handed manner and that there was no warrant for according a stepmotherly treatment when the 'State' was the applicant praying for condonation of delay. More recently another two Judges' Bench of the Supreme Court in *Binod Bihari Singh v. Union of India*, : AIR 1993 SC1245 . observed as follows:

'In our views, it is not at all a fit case where in the anxiety to render justice to a party so that a just cause is not defeated, a pragmatic view should be taken by the Court in considering the sufficient cause for condonation of delay under Section 5 of the Limitation Act. Coming to the contention of Mr. Ranjit Kumar that to defeat a just claim of the appellant, the ignoble plea of bar of limitation sought to be raised by the respondent should not be taken into consideration, we may indicate that it may not be desirable for the Government or the public authority to take shelter under the plea of limitation to defeat a just claim of citizen. But if a claim is barred by limitation and such plea is raised- specifically the- Court cannot straightaway dismiss the plea simply on the score that such plea is ignoble. A bar of limitation may be considered even if such plea has not been specifically raised. Limitation Act is a statute of repose and bar of a cause of action in a Court of law, which is otherwise lawful and valid, because of undesirable lapse of time as contained in the Limitation Act, has been made on a well accepted principle of jurisprudence

and public policy.'

In *G. Ramegowda v. Special Land Acquisition Officer, Bangalore*, : [1988]3SCR198 . the Supreme Court refused to interfere with the discretion exercised by the High Court of Karnataka in condoning the delay under Section 5 of the [Limitation Act, 1963](#) even though observing that the criticism that the delay on the part of the Government for over a year even after it was put on notice of the award and decree could not be said to be either bonafide or compelled by reasons beyond its control, was not without substance and that the conduct of the Government was perilously close to such inaction as might, perhaps, have justified rejection of its prayer for condonation. The Supreme Court laid down the guidelines for condoning the delay under Section 5 of the [Limitation Act, 1963](#) as follows:

'There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack, of bonafides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of the delay.'

3. Sub-section (2) of Section 168 of the [Motor Vehicles Act, 1988](#) ('the Act' for short) requires that the Claims Tribunal 'shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award' and sub-section (3) of that Section requires the person, who is required to pay any amount in terms of such award, to deposit the same within thirty days from the date of announcing the award by the Claims Tribunal. This provision makes abundantly clear the anxiety of the Parliament in having the accident claims being settled at the earliest, Sub-section (1) of Section 173 of the Act, which provides for appeal by any person aggrieved by an award of a Claims Tribunal, gives ninety days time from the date of the

award for preferring an appeal to the High Court. Second proviso to Section 173(1) of the Act provides that the 'High Court may entertain the appeal after expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.' Thus, Parliament thought fit to provide separately instead of referring the appellant to Section 5 of the [Limitation Act, 1963](#); which means that the second proviso to Section 173(1) of the Act has to be interpreted keeping in view the scheme of the Act and the anxiety of the Parliament to see that the matters of claims for compensation in respect of accidents involving motor vehicles should be disposed of without undue delay.

4. Sub-rule 8 of Rule 476 of A.P. Motor Vehicles Rules, 1989 provides that 'the Claims Tribunal before whom an application for compensation liability arising out of the provisions of Chapter X of the [Motor Vehicles Act, 1988](#), has been made, shall dispose of such an application within forty-five days from the date of receipt of such application'.

5. In this connection, the difference in the language adopted in Section 5 of the [Limitation Act, 1963](#) and the second proviso to Section 173(1) of the Act has to be noticed. Section 5 of the [Limitation Act, 1963](#) provides that any appeal or application etc., 'may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period'. Second proviso to Section 173(1) of the Act, on the other hand, provides for a different satisfaction 'that the appellant was prevented by sufficient cause from preferring the appeal in time'.

6. On the facts of the present case, we do not find that the petitioner has made out that he was 'prevented' by any sufficient cause from preferring the appeal within the time of ninety days allowed to him. It is incumbent on a person preferring an appeal under Section 173(1) of the Act to take all care to see that the appeal is filed within time and unless he shows 'sufficient cause' which prevented him from preferring the appeal in time in spite of care and diligence, this Court will not be inclined to entertain an appeal preferred out of time. The satisfaction of the Court under the second proviso to Section 173(1) will naturally have to depend on the appellant establishing that in spite of all care and diligence it was not possible for it

to prefer the appeal in time. The onus is on the appellant to satisfy the Court that it was so prevented.

7. This Civil Miscellaneous Petition is, therefore, dismissed.

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