

Union of India Vs. Sri Simon

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Court : Allahabad

Decided On : Nov-03-1989

Reported in : AIR1990All74; [1990(60)FLR147]; (1990)3UPLBEC1866

Judge : A.N. Dikshita, J.

Acts : [Limitation Act, 1963](#) - Sections 5

Appeal No. : Civil Revn. No. 66 of 1985

Appellant : Union of India

Respondent : Sri Simon

Advocate for Def. : Sarad Madhyan and ;R.K. Madhyan, Adv.

Advocate for Pet/Ap. : Standing Counsel

Judgement :

ORDER

1. This revision has been preferred by the Union of India against the order dated 24-9-1984 passed by the 9th Additional District Judge, Agra, rejecting an application for condonation of delay in filing appeal against the judgment and decree dated 5-8-1983 in suit No. 225 of 1983 decreeing the suit of the plaintiff opposite party.

2. The facts in brief are that the opposite party who was a Mess Worker in Air Force at Agra filed suit No. 225 of 1983 for setting aside his order of termination on the allegation that his services were wrongly terminated.

3. The suit was contested on behalf of the applicant. It was ultimately decreed.

4. The applicant feeling aggrieved by the judgment and decree in suit No. 225 of 1983 intended to prefer an appeal. The necessary steps were taken by the applicant for applying the certified copies of the judgment and decree on 24-8-1983. It may be relevant that the decree was signed on 16-8-1983. The copies of the judgment and decree were ready on 29-8-1983 and were received by the counsel for the applicant on 13-9-1983. Instructions to file the appeal were given by the applicant to its counsel on 18-9-1983 and the appeal was filed on 20-10-1983. Later on it was found that the appeal was beyond-time and as such an application under section 5 of the Limitation Act for condonation of delay was filed on 31-10-1983. This application was supported by an affidavit. The application was, however, rejected Vide order dt. 24-9-84 thus giving rise to this revision.

5. Heard learned counsel for the parties. Learned counsel for the applicant has submitted that the Court below erred with material irregularity while ignoring the fact that the applicant was not at fault but it was on account of the fault of either the office of the counsel or the counsel himself who were negligent in informing the applicant about the fate of the suit and later on in spite of the instructions dated 18-9-1983 in filing the appeal on 20-10-1983. It was alleged by the applicant that the counsel did not inform about the delay in filing the appeal and it was after some time that the applicant per force was directed to file an application under section 5 of the Limitation Act along with an affidavit. Learned counsel for the applicant further submitted that the applicant had to undergo various formalities in filing the appeal after the decision of the case and if any such delay has been occasioned then such delay is liable to be condoned. In the instant case it is clearly emerging that suitable steps were taken with promptitude but the instructions which were sent to the counsel for the applicant were not complied with and it was after a month of the sending of such instructions to the counsel that the appeal was filed. The affidavit filed in support of the application clearly reveals that

instructions were issued by the applicant on 18-9-1983 but the appeal was filed on 20-10-1983. Apparently there were no laches on the part of the applicant who within five days had taken steps to instruct its counsel for filing the appeal. As already shown above the laches or negligence were more on the part of the counsel or his office but the applicant was always willing and prepared to take appropriate steps as is gathered from the record that the copy of the judgment and decree were received by the counsel on 13-9-1983 and on 18-9-1983 instructions were given to file the appeal. It cannot be lost sight of as it is a matter of common knowledge that the Union or the State Government have to act in certain administrative manner and with clear norms to pursue the legal remedies and they cannot pursue a litigation like an individual as they have to rely on the working of their officers/ officials and their counsel as well. While disposing of an application under section 5 of the Limitation Act the court is only required to consider the sufficiency of the case taking into account the reasonable facts of the case. There is no doubt that the consideration of the existence of a sufficient cause is a discretionary power but such a discretion has to be exercised on sound judicial principles and not on the mere fancies or whims of the Court. Instantly no objections to the application under section 5 of the Limitation Act or any counter affidavit was filed. Even on the date when the application under section 5 of the Limitation Act was disposed of, the counsel of the opposite party and the opposite party himself were absent. It is thus apparent that the Court below has acted in the exercise of its jurisdiction against sound judicial principles and has thus committed material irregularity. The Court below at no stage found that the applicant was claiming condonation of delay without any good cause.

6. Relying on *Revenue Divisional Officer v. T. Laxminarayana*, AIR 1975 Andh Pra109, *M.L. and Building Corporation Ltd. v. Bhutnath Banerjee*, AIR 1964 SC 1336 and *Ram Lal v. Rewa Coalfields Ltd.* AIR 1962 SC 361 this Court in, the case of *Laxmi Devi v. U. P. State*, AIR 1988 All 133 has held that the existence of sufficient cause should receive a liberal consideration so as to advance substantial justice. Further in the instant case the Court below did not find any negligence or inaction on the part of the applicant who had clearly spelt out that the delay had occasioned on account of an error or negligence of the counsel or his office. In any case a litigant should not suffer on account of the laches or inaction of his counsel.

7. In view of the above the revision deserves to be allowed and the delay is liable to be condoned.

8. In the result the revision succeeds and is hereby allowed and the order dated 24-9-1984 is set aside. The District Judge shall proceed to dispose of the appeal according to law.

9. Petition allowed.

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