

State of U.P. and Another Vs. Surendra Nath and Others

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Court : Allahabad

Decided On : Apr-29-1991

Reported in : AIR1992All127

Judge : N.N. Mithal and ;G.D. Dube, JJ.

Acts : [Limitation Act, 1963](#) - Sections 5 and 14

Appeal No. : F.A. No. 613 of 1989

Appellant : State of U.P. and Another

Respondent : Surendra Nath and Others

Advocate for Def. : Harihar Prasad Dubey, Adv.

Advocate for Pet/Ap. : M.S. Negi, Chief Standing Counsel

Judgement :

ORDER

G. D. Dube, J.

1. An application under S. 5 of Limitation Act has been moved by the State of U.P. to condone the delay of 109 days in filing the appeal.

2. The impugned judgment and award was given by the VI Additional District Judge on 27-2-1989. The appeal was filed on 20-9-1989 with a court-fee of Rs.

10/- only. There was a deficiency of Rs. 54,885/-. The Stamp Reporter had reported on 19-9-89 that the appeal was beyond time by 109 days on that date.

3. In order to explain the delay the clerk of Special Land Acquisition Officer (hereinafter referred SLAO for brief), Azamgarh has stated in his affidavit that after receipt of the copy of the judgment and decree the Collector sent the papers to the State Government, which gave its direction on 1-7-1989 for filing appeal. It was received in the officer of SLAO on 31-7-1989. The clerk of SLAO proceeded to Allahabad on 2-8-1989 and made inquiries from the office of the Standing Counsel about the expenses. After making the inquiries the clerk went back. The clerk came to know that there was strike in the High Court hence he was advised to come to the court after the strike. Hence he has come to High Court on 21-8-1989. It was stated that as High Court remained closed due to strike, so the appeal could not be filed before 20-9-1989.

4. In the counter affidavit the respondent Rajendra Nath alleged that State Government and its employees have been highly negligent. First of all they have applied for copy after 1-1/2 months of judgment which delay they have not explained when they themselves admit that the Collector immediately after the judgment, had instructed the District Government Counsel to apply for copy of the judgment and expenses were placed at his disposal. The SLAO clerk has not disclosed that when the papers were sent to the Collector which were admittedly received on 25-5-1989. The State Government has also not explained the reasons for issue of necessary instructions on 22-7-1989 when they came to know that the last date for filing appeal was up to 14-7-1989. It was stated that the strike in High Court began before 10-8-1989. It was only an Advocate strike not to appear before the Court. It was not for doing the chamber's work by the counsel. It was also stated that the registry of the High Court remained open except on a few days. The appeal, therefore, could be filed within the period of limitation.

5. We heard the parties' counsel after exchange of affidavit and counter affidavit. While looking into the record we noticed that there was an allegation that the official of the department concerned came to the office of the Chief Standing Counsel on 21st of August, 1989 with expenses. Despite this supply of expenses

appeal was filed with a deficiency of court-fee as stated above. This deficiency was made good on 15-11-1989. We also notice that Court-fee stamps worth Rs.300/-, Rs.500/-, Rs. 1000/-, Rs.3000/-, Rs. 25,000/- and Rs. 25,000/- were purchased on 6-11-1989, 1-11-1989, 6-11-1989, 7-11-1989 and 3-11-1989 respectively. We, therefore, directed the State Government to explain the circumstances under which the stamps were purchased on various dates and why the appeal was filed with a huge deficiency when the money had already been placed at the disposal of State counsel on 21-8-1989.

6. In order to explain the circumstances which led to the furnishing of court-fee by annexing court-fee stamp purchased on different dates Ravi Prakash a clerk of the Chief Standing Counsel, Allahabad has filed his affidavit. He alleged that Court-fee stamp of Rs.300/-, Rs. 1000/- and Rs.500/- were purchased from the stamp vendor in the High Court. He also stated that one Rang Bahadur, Upper Division Assistant, Incharge of First Appeal Section in Chief Standing Counsel Office submitted voucher on 23-10-89 to Baijnath for supplying of court-fee in respect of some first appeals. The Accountant got Challan and cheque for Rs. 7,50,000/- prepared on 23-10-89 having been signed by the Chief Standing Counsel. The court-fee stamps could be available only on 3-11-1989. There were 30 court-fee stamps of Rs. 25,000/- each. After supplying of the court-fee stamp in four appeals two court-fee of Rs. 25,000/- were left in the box of the Accountant which were supplied to Rang Bahadur who requisitioned the court-fee stamps of Rs.54,000/- on 3-11-1989. This clerk of the Chief Standing Counsel has stated that he generally purchases the court-fee stamp when he is required to purchase after receipt of Bank Draft and Cheque. Thereafter he keeps the court-fee stamps in his box and as soon as a voucher is submitted for supply of court-fee stamp, he supplies the same if there is balance of court fee stamps in his box and if there is no balance then the court-fee stamps are purchased from the treasury.

7. Respondents have filed counter affidavit stating that the explanations given by the clerk of the Chief Standing Counsel are not satisfactory. It was urged that if the Accountant was competent to supply the court-fee from his box on a requisition made by the clerk concerned then there was no justification for filing the appeal with a court-fee stamp of Rs. 10/- only. It was urged that the appeal could have

been filed on the date on which money was allegedly supplied to the State counsel by the Department concerned. There was no justification at all to delay the filing of the appeal.

8. When we had initially heard the case the learned counsel for appellant urged that sufficient cause for the delay had been explained at every stage. Now learned counsel urged that while considering the petition under S. 5 of the Indian Limitation Act, the court should not take a very strict view. It was argued that the Government was not going to gain by making delay in filing appeal. For every day delay, it was incurring the liability in payment of interest. In this way the delay was not at all in the interest of the State. Only on account of the usual delay occurring in the movement of the file from one stage to the other, the delay had occurred.

9. Learned Standing counsel drew our attention to *Ram Lal v. Rewa Coal Field* : [1962]2SCR762 . The supreme Court had laid down the considerations which should prevail over the mind of a Court while considering the application under S. 5 of the Limitation Act. In this case, there was one day's delay in filing of the appeal. The appellant had contended that one of the partners of the appellant firm, who was Incharge of the litigation cell, had fallen ill on the last day of limitation. It was, therefore, prayed that the delay be condoned. On these considerations, the Supreme Court observed (at pp. 363-64 of AIR):

'In construing S. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal.'

10. The Supreme Court had also considered the relevant consideration which should prevail while dealing with a petition under Ss. 5 and 14 of the Limitation Act. The distinction between the two sections was stated in para 12 of the case in the following words :--

'It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by S. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under S. 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Ss. 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of S. 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under S. 5 without reference to S. 14. In the present case there is no difficulty in holding that the discretion should be exercised in favour of the appellant because apart from the general criticism made against the appellant's lack of diligence during the period of limitation no other fact had been adduced against it. Indeed, as we have already pointed out, the learned Judicial Commissioner rejected the appellant's application for condonation of delay only on the ground that it was appellant's duty to file the appeal as soon as possible within the period prescribed, and that, in our opinion, is not a valid ground'.

11. Thus the Supreme Court had laid down that the considerations which may be material and relevant for a petition u/S. 14 of the Limitation Act cannot be applied to the same extent and in the same manner invoked while dealing with an application u/S. 5 of the Limitation Act.

12. The Supreme Court had not accepted in Ram Lal's case : [1962]2SCR762 (Supra) the view of the Judicial Commissioner, Nagpur in Kedar Nath v. Zumberlal : AIR 1916 Nagpur 39 which had expressed the view that an appellant, who wilfully leaves the preparation and presentation of this appeal to last day of the period of limitation prescribed therefor, is guilty of negligence and is not entitled to an extension of time. This view of the Judicial Commissioner was not accepted as a valid ground for rejecting the petition under S. 5 of the Limitation Act.

13. Our attention was further drawn to State of U.P. v. Bahadur Singh : 1983ECR1556D(SC) . This was a case where the writ petition had been filed after ninety days. It was delayed by forty days. The Supreme Court had observed that there is no prescribed period for filing writ petition. It was a rule devised on the principle of judicial circumspection and has to be applied wisely. This was a case where the proceedings under ceiling law was the subject of the writ petition. The Supreme Court observed that in a proceeding under ceiling law the department has to be apprised of adverse decision and further decision has to be taken whether the case is one which requires to be taken into higher Court. The Supreme Court further said that the departmental authorities charges with a duty to implement the law, no doubt, should be vigilant but one aspect cannot be overlooked that the departmental authority may delay the moving of higher Court for oblique motive and the public interest may suffer if such case is thrown out merely on the ground of some delay which is also explainable. Thus, in this case, the Supreme Court had taken into consideration the ways in which the various departments move in tackling the litigation arising in the affairs from such department.

14. The third case relied upon by the Standing Counsel is Bhag Singh v. Major Daljit Singh (1987) 2 All Rent Cas 300 (SC) was a case where application for setting aside abatement was filed within sixty days from the date of abatement. The application for condonation of the delay had been moved under S. 5 of the Limitation Act for bringing on record the legal representatives of the deceased. In this case, the Supreme Court observed that the law is now well settled by several decisions that the Court while considering the application under S. 5 of the Limitation Act will consider the facts and circumstances not for taking too strict and

pedantic stand which will cause injustice but to consider it from the point of taking a view which will advance the cause of justice.

15. The last case relied upon by the learned Standing Counsel is Collector Land Acquisition v. Mst. Katiji : (1987)ILLJ500SC . In this case, the Supreme Court had laid down six principles for dealing the application under S. 5 of the Limitation Act. They are :

'1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.'

16. The Supreme Court observed that while making a justice-oriented approach from the above perspective, it must be considered that the State, which was seeking condonation not a private party is altogether irrelevant. The Supreme Court observed that experience shows that on account of an impersonal

machinery where no one Incharge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal and the inherited bureaucratic methodology imbued with the note-making, file, pushing, and passing-on the buck ethos, delay on its part is less difficult to understand though more difficult to approve. The Supreme Court also stated that the State, which represents the collective cause of the community does not deserve a litigant non grata status.

17. A Division Bench of this court of which one of us was a member while disposing of an application under S. 5 of Indian Limitation Act in First Appeal No. 710 of 1989, State v. Phota, F.A. No. 711 of 1989, State of U.P. v. Sukhvir Singh F.A. No. 712 of 1989, State of U.P. v. Mahabir and F.A. No. 713 of 1989, State of U.P. v. Sahab Singh delivered on 7th March, 1991 (reported in : AIR1991 All229) had noticed the cases of G. Rame Gawdra v. S.L.A.O. Bangalore : [1988]3SCR198 and Mrs. Sandhya Rani Sarkar v. Smt. Sudha Rani : [1978]2SCR839 . The Division Bench after considering the aforesaid case laws summarise the legal position as it emerged from the decision considered in its judgment in the following words:--

'(i) State and the private individual both stand on the same footing and should be treated alike. In the case of the State however, while construing the cause shown the court should be alive to the impersonal nature of State machinery loaded as it is with inherited bureaucratic methodology inspired with note-making-file, pushing, and passing on the back ethos. Thus some delay may be inevitable and this should receive a more liberal consideration and is not to be viewed in a pedantic manner.

(ii) Approach in considering the cause shown should be such which would advance the cause of substantial justice rather than throttle it.

(iii) The party which seeks condonation must also bear the burden of showing that despite all necessary steps being taken to file the appeal within time it failed due to cause beyond its control. There must be absence of negligence or inaction and also no lack of bona fide, should be attributable to it.

(iv) Only on crossing these hurdles can an application for condonation succeed. However, each case deserves to be decided on its own facts and circumstances and no straight jacket formula can be prescribed'.

18. Thus on a consideration on whole matters we do not find that on the facts put forwarded the State Government has made out any case for condonation of delay. Despite the filing of affidavit, rejoinder affidavit and supplementary rejoinder affidavit from time to time the appellant has not cared to state so far as to when the papers were sent to the State government for giving sanction to file the appeal. The copy of the judgment had been obtained by the District Government counsel on 25-5-1989. The limitation for filing this appeal was only up to 2nd July of 1989. It has not been stated as to when the Collector had sent the papers to State Government for sanction. There is no material on record to show as to why the sanction granted by the State Government on 1-7-1989, reached the office of the Collector on 31-7-1989.

19. It is true that the State Government is not required to prove the delay in a more strictway than a private individual yet ought to have stated the various steps taken by it in filing the appeal.

20. The learned counsel for the respondents has criticised the act of the State in moving the copying department after about 1 1/2 months for obtaining copy of the judgment. According to the case laws discussed above the case of the appellant cannot be thrown out simply because it took 1 1/2 months to move the Copying department for issue of a copy of the judgment. The State Government was, however, required to state the steps taken by it on each stage. We find that despite several opportunity the State Government had not cared to explain the delay between 25-5-1989 to 31-7-1989.

21. The explanation given by the State Government for not furnishing the full court fee on the first date of filing the appeal is far from satisfactory. The affidavit of Ravi Prakash, an upper division assistant in the office of Chief Standing counsel reveals such facts on the basis of which there was no justification for the office of the Chief Standing counsel to have fiied this appeal with a deficient court-fee of Rs. 54000/-. According to Ravi Prakash the court-fee stamp are supplied whenever requisitions

are made. He purchases the court fee stamp whenever money is supplied to him. It is not a fact that money made available by a department for a particular case is utilised for purchase of court fee to be affixed in that very case. Actually speaking Ravi Prakash maintained a stock of court-fee stamp and supplies them whenever a requisition is made by Rang Bahadur, the appeals clerk. In these circumstances there was no justification to file the appeal with a court-fee of Rs. 10/- and with a deficiency of more than Rs. 54,000/-.

22. We are not satisfied with the explanation of the State counsel that on account of strike by the lawyers in the High Court the appeal could not be filed. The office was not closed on account of strike. It has not been stated that during strike that office of the Chief Standing Counsel was also on strike. If the office of the Chief Standing counsel was functioning during the strike and the registry of the High Court was open then there could be no hindrance in filing the appeal in registry as soon as the papers were received.

23. For the reasons mentioned above we find that the State has not tried to explain as to why it has dealt the case in a very casual manner.

24. In view of the above discussions we find no force in application under S. 5 of Indian Limitation Act and the same is accordingly rejected. The memo of appeal is also rejected.

25. Order accordingly.