

State of U.P. and ors. Vs. Mahipat Rai Verma and ors.

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Court : Allahabad

Decided On : Jul-28-1988

Reported in : 1(1989)ACC306

Judge : A.N. Varma and ;A.N. Dikshita, JJ.

Appellant : State of U.P. and ors.

Respondent : Mahipat Rai Verma and ors.

Judgement :

A.N. Varma, J.

1. The instant application Under Section 5 of the Indian Limitation Act has been filed for the condonation of delay in filing the appeal to this Court.

2. Briefly stated, the facts are that one Dr. Lajpat Rai Verma aged about 50 years was posted as Chief Medical Officer, Pauri. In connection with an official tour he undertook a journey from Pauri to Kotdwara on 28-12-83 by Jeep No. UTS-6612. The jeep belonged to U.P. State Health Services and was driven by the official driver Mahendra Singh. The wife of Dr. Lajpat Rai Verma was accompanying him. At about 8.45 p.m. at a distance of about 1 km. ahead of Paldul the jeep had an accident and fell into a Khud killing on the spot the wife of Dr. Lajpat Rai Verma as well as the driver. Dr. Lajpat Rai Verma while on way to hospital succumbed to the injuries sustained in the accident.

3. At the time of his death Dr. Lajpat Rai Verma was drawing Rs. 3430/- as salary besides other emoluments. Dr. Verma was to attain the age of superannuation after 7 years 3 months and 3 days.

4. Consequently a claim petition Under Section 110-A of the Motor Vehicles Act 1939 and Fatal Accidents Act 1855 was filed by Mahipat Rai Verma s/o Dr. Lajpat Rai Verma before the Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal), Pauri Garhwal. This claim petition was contested on behalf of the appellants (defendants). The Tribunal decreed the claim petition for a sum of Rs. 2 lacs alongwith the interest at the rate of Rs. 6% per annum w.e.f. 25-6-84.

5. Aggrieved the appellants have preferred this first appeal from order to this Court.

6. As the appeal was preferred beyond the statutory period of limitation, the instant application for condoning the delay in filing the appeal has been referred. It was found that the delay of 144 days has been caused in filing this appeal. On this application Under Section 5 of the Indian Limitation Act notices were issued to the respondents who have filed a counter-affidavit. A rejoinder-affidavit has also been filed.

7. Learned Counsel for the parties have been heard for some time. Sri N.L. Gangoli, learned Standing counsel for the appellants has strenuously urged that sufficient cause has been shown and as such the delay is liable to be condoned. It has also been submitted that neither there are any laches rediently revealing on the record nor the appellants acted in leisurely manner but showed all the promptitude in taking necessary steps for filing the appeal. It has been stated by the learned Standing Counsel that the certified copies of the judgment and decree were made available on 14-1-86 to the District Government Counsel who promptly sent them to the Chief Medical Officer, Pauri Garhwal who in turn sent the same to the Additional Director General of Medical and Health Services, Lucknow on 25-1-86 alongwith a copy to the Secretary, Medical and Health Department. All this was done to obtain necessary permission for filing the appeal. The Law Department of the State Government granted the requisite permission for filing the appeal on 10-4-86. It has further been submitted that after the receipt of such permission from

the appropriate authorities the papers were sent to the Chief Standing Counsel for filing the appeal but in view of the strike of the lawyers in the Court nothing tangible could be done. Ultimately the appeal could be filed on 5-7-86.

8. Elaborating the chronological statement of facts learned Standing Counsel has submitted that all efforts were made by the appellant to do the needful. It is submitted that the courts should bear in mind the functioning of the Government and often delays are occasioned which are infact bona- fide and do not reflect of any laches or inaction. No doubt it is true that no separate standard is provided for the State for determining the sufficiency of the cause but at the same time it cannot be lost sight of that the State can not be put on the same level as an individual and whether such appeal has been occasioned than reasons for the delay having been occasioned, require a liberal consideration. It has to be found out whether the cause was beyond the control of the appellants in not filing the appeal within the prescribed time and the learned Standing Counsel has vehemently urged that such a sufficient cause has been set forth. In the case of *State of West Bengal v. Administrator Howrah Municipality* : [1972]2SCR874a it was held that the existence of sufficient cause should receive a liberal construction so as to advance substantial justice. It was observed as under:

It is clear that the words 'Sufficient cause' 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.

Basing his submissions in the light of the above observations learned Standing Counsel has submitted that throughout the appellants were acting in good faith. It is, no doubt, a matter of common knowledge that the State Government has to act in certain administrative manner and with clear norms to pursue the legal remedies. It cannot act or pursue a litigation like an individual as it has to rely on the working of its officers/officials and its counsel as well. However, such a question or existence of the sufficient cause has to be decided on the facts and circumstances existing in a particular case. The consideration of the existence of a sufficient cause is a discretionary power with the Court but such a discretion has to be exercised on sound judicial principle. Presently, however persuasive the

submission of the learned Standing Counsel may be the facts on record are at variance from such submissions. Even the affidavit sworn in support of the application for condonation of delay does not reveal the true state of affairs. It has been stated in para 2 of the affidavits as under:

2. That the claim petition was decreed on 9-12-1985 and the decree was prepared on 11-12-1985. Application for, obtaining the certified copy of judgment and decree was duly made within time and they were obtained on 14-1-1986 by the D.G.C., who forwarded the judgment alongwith his opinion to the Chief Medical Officer, Paurigarhwal.

9. From the above recital it is manifestly borne out that the certified copies of the judgment and decree were made available and obtained by District Government Counsel on 14-1-1986. This deposition on oath is belied by the dates mentioned on the certified copies of judgment and decree. It is revealing from a perusal of the certified copies of the judgment and decree that it was on 3/21-5-86 that copies were applied for and were made available on the same day. The law provides that every memo of appeal should be accompanied by a certified copy of the judgment and decree.

10. From the above it is clear that the appellants applied for obtaining the certified copy of the judgment and decree on 21-5-86 and which were made available on that very day i.e. on 21-5-1986.

11. Another aspect of the case which also requires anxious consideration is that as it is well settled that a party who has been successful in the litigation and has been granted an order in his favour cannot be deprived of such a right and advantage that has accrued to him. However, at the same time his adversary cannot be deprived from challenging the order merely because a delay was caused which was found sufficient by the Court but the person who is claiming to set at naught the fault of success of a successful litigation may not be entitled to the condonation of delay as a matter of right. In case of *Ram Lal v. Rewa Coalfields Ltd.* : [1962]2SCR762 , the Supreme Court has held as under:

In construing Section 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. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, 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. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

x x x x 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 Section 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 of its bona fides may fall for consideration; but the scope of the enquiry which 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.

12. From the above it is clear that no sufficient cause has been shown and infact it is borne out from the perusal of the record that the appellants were guilty of laches, inaction and leiwsure. Further the affidavit filed in support of the application is contradictory in term and intent more so when it is found that the certified copies of the judgment and decree were applied for on 21-5-86 and were made available on the same day while in the affidavit it is stated that they were obtained on 14-1 86.

13. It has further been shown in the affidavit filed in support of the application that there was strike of lawyers in the High Court which prevented the appellants to file the appeal. This fact again is not a solemn truth as it is common knowledge that the courts had started functioning w.e.f. 14-5-86. Even otherwise the appeal could have been preferred to the Registry beyond the expiration of the period of limitation. The facts as stated in the affidavit thus do not inspire any confidence so as to persuade us to extract sufficient cause for delay from their records.

14. Another glaring fact which has attracted our attention is that a senior officer of the State Government has died in the accident and to deny his heirs the claim awarded by the Tribunal would be a negation of justice and that too when it is found that the appellants were guilty of laches and inaction.

15. In view of the above the application is wholly misconceived and laden with mirthful assertions which deserve to be spurned.

In the result the application Under Section 5 of the Indian Limitation Act fails and is hereby dismissed.

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