

Bhoore and ors. Vs. Additional Commissioner (Judicial), Moradabad Division and ors.

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SooperKanoon Citation : sooperkanoon.com/485948

Court : Allahabad

Decided On : May-12-2009

Reported in : 2009(4)AWC3916

Judge : S.P. Mehrotra, J.

Appellant : Bhoore and ors.

Respondent : Additional Commissioner (Judicial), Moradabad Division and ors.

Advocate for Pet/Ap. : Shri. V.C. Srivastava

Disposition : Petition dismissed

Judgement :

S.P. Mehrotra, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 27.9.2007 (Annexure-3 to the writ petition) passed by the Additional Commissioner (Judicial), Moradabad Division, Moradabad (respondent No. 1).

2. From the averments made in the writ petition, it appears that against the order dated 9.12.1998, passed by the Sub-Divisional Officer, Nageena cancelling patta

in respect of the land in question, the petitioners filed a revision on 1.12.1999 under Section 333 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short 'the Z.A. Act'). The said revision was dismissed in default on 24.6.2004 by the Additional Commissioner (Judicial), Moradabad Division, Moradabad (respondent No. 1).

3. Copy of the said order dated 24.6.2004 has been filed as Annexure-1 to the writ petition.

4. A restoration application dated 14.6.2007, alongwith an application under Section 5 of the Limitation Act of the same date was filed on behalf of the petitioners. It was, inter alia, prayed in the said restoration application that the order dated 24.6.2004 be set aside and the revision be restored to its original number. In the application under Section 5 of the Limitation Act, it was, inter alia, prayed that the delay in filing the restoration application be condoned.

5. Copy of the restoration application has been filed as Annexure-2 to the writ petition.

6. Copy of the application under Section 5 of the Limitation Act has been filed as Annexure-2A to the writ petition.

7. An affidavit, sworn by Bhoore (petitioner No. 1), was filed in support of the said applications.

8. Copy of the said affidavit has been filed as Annexure-2B to the writ petition.

9. It is, inter alia, stated in the said applications that the earlier Counsel engaged by the petitioners for conducting the revision told the petitioners that he would look after the revision and it was not necessary for the petitioners to come on peshi; and that Bhoore (petitioner No. 1) was authorized to do pairvi in the case on behalf of the petitioners; and that the said earlier Counsel told the said Bhoore also that he (Bhoore) should find-out the date fixed in the case on telephone; and that the said earlier Counsel was regularly informing the petitioners regarding various dates, and, therefore, the petitioners were not appearing on the dates fixed in the revision; and that the petitioners were also sending fee to the said earlier Counsel

from time-to-time; and that when after expiry of three years, the petitioners asked the said earlier Counsel as to why the revision had not been so-far decided, the said earlier Counsel consoled the petitioners that the revision would be decided when its turn would come; and that on 13.6.2007, the petitioners came to the chamber of the said earlier Counsel and enquired about the case, whereupon the said earlier Counsel scolded the petitioners and compelled them to go out from his chamber; and that the petitioners, thereafter, contacted Shri Jameel Ahmad, advocate, who after making inspection, informed the petitioners that the revision had already been dismissed in default on 24.6.2004.

10. By the order dated 27.9.2007, the Additional Commissioner (Judicial), Moradabad Division, Moradabad (respondent No. 1), rejected the said application for condonation of delay filed under Section 5 of the Limitation Act, and in consequence, rejected the restoration application also.

11. Copy of the said order dated 27.9.2007, has been filed as Annexure-3 to the writ petition.

12. The petitioners have, thereafter, filed the present writ petition before this Court seeking the reliefs as mentioned above.

13. A counter-affidavit has been filed on behalf of the respondent Nos. 1, 2 and 3. The petitioners have filed the rejoinder-affidavit.

14. I have heard Shri V.C. Srivastava, learned Counsel for the petitioners and the learned standing Counsel appearing for the respondent Nos. 1, 2 and 3, and perused the record.

15. It is submitted by Shri V.C. Srivastava, learned Counsel for the petitioners that the respondent No. 1 has not dealt with various reasons mentioned in the application under Section 5 of the Limitation Act and has disbelieved the version of the petitioners by passing a cryptic order. It is further submitted that the earlier Counsel engaged by the petitioners was informing the petitioners regarding various dates fixed in the case, and, therefore, the petitioners were not attending the case on such dates. It is submitted that the petitioners were not at fault and the

reasons given by the petitioners in the application under Section 5 of the Limitation Act ought to have been believed by the respondent No. 1. It is further submitted that the Court should adopt lenient view in such matter so that the matter may be decided on merits.

16. In reply, the learned standing Counsel appearing for the respondent Nos. 1, 2 and 3 has submitted that the respondent No. 1, on a consideration of the material on record, has disbelieved the version of the petitioners as given in the application under Section 5 of the Limitation Act, and no interference is called for by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India in the matter.

17. I have considered the submissions made by the learned Counsel for the parties.

18. A perusal of the order dated 27.9.2007, passed by the respondent No. 1 shows that the respondent No. 1 held that the restoration application had been filed with a delay of about three years which was an unnatural delay; and that the cause for the delay shown in the delay condonation application that the Counsel did not inform about the date was wholly unbelievable; and that in case the petitioners did not receive information regarding the date fixed from their Counsel, they should have themselves contacted the Court within a month or two to find-out the date fixed in the case; and that as the cause for delay shown in the delay condonation application was unnatural and unsubstantiated, the delay condonation application was rejected; and that in consequence of the rejection of the delay condonation application, the restoration application was also rejected.

19. Having perused the order dated 27.9.2007, passed by the respondent No. 1, I am satisfied that cogent reasons have been given by the respondent No. 1 for rejecting the delay condonation application filed on behalf of the petitioners and in consequence rejecting the restoration application. A perusal of the delay condonation application shows that the version of the petitioners given therein for condonation of the long delay of about 3 years does not inspire confidence. The petitioners have not given any details regarding the dates in regard to which their earlier Counsel had given information on telephone. No details have been given

regarding the dates on which the petitioners had contact with their earlier Counsel on telephone. No details have been given regarding the dates on which the payments were allegedly made by the petitioners to. their earlier counsel. It is noteworthy that the revision was filed on 1.12.1999 and it remained pending till it was dismissed in default on 24.6.2004. No convincing reason has been given by the petitioners as to why till 23.6.2004 they did not contact their earlier Counsel at all. In the circumstances, I am of the opinion that the respondent No. 1 cannot be said to have acted in a perverse manner in disbelieving the version of the petitioners as given in the delay condonation application. The submission made by Shri Srivastava in this regard, cannot, in my view, be accepted.

20. As regards the submission made by Shri Srivastava that the Court should adopt lenient view in these matters, it is noteworthy that Section 341 of the Z.A. Act makes the Limitation Act, 1963 including Section 5 thereof applicable to the proceedings under the Z.A. Act.

21. Section 5 of the Limitation Act, 1963 provides as follows:

5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 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.

Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

22. In Smt. Pramila Sharma and Ors. v. District Judge, Kanpur Nagar and Ors. 2004 (56) ALR 87, this Court referred to the provisions of Section 5 of the Limitation Act, 1963 and held as under (paragraphs 26, 27, 28, 29 and 30 of the said A.L.R.):

26. Section 5 of the Limitation Act, 1963, inter alia, provides that an appeal or an application 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. It will thus, be seen that two things are required to be shown by the appellant or the applicant with reference to Section 5 of the Limitation Act, 1963:

(1) The appellant or the applicant had cause for not preferring the appeal or making the application within the prescribed period. In other words, the appellant or the applicant must show that there was cause for not preferring the appeal or making the application within the prescribed period.

(2) The said cause shown by the appellant or the applicant was sufficient cause. In other words, the appellant or the applicant should establish that the cause shown by him was sufficient cause.

27. It is well-settled that the Court should adopt liberal view on the question of 'sufficient cause', and should lean in favour of giving hearing to both the sides. However, the said principle regarding liberal approach on the question of 'sufficient cause' applies when the aforesaid requirement No. 2 is being considered.

28. If the cause shown by the appellant or the applicant (i.e., requirement No. 1 above) is found to be true, then only the question would arise as to whether the said cause is sufficient or not [i.e., requirement No. 2 above). It is at this stage that the above principle regarding liberal approach on the question of 'sufficient cause' applies. In other words, once the cause shown by the appellant or the applicant is found to be true, the Court should be liberal in deciding as to whether such cause is sufficient or not.

29. On the other hand, if the cause shown by the appellant or the applicant is itself found to be false [i.e., requirement No. 1 above), then the question of considering as to whether such cause is sufficient or not (i.e., requirement No. 2 above) does not arise. Hence, in such a case, no occasion arises for applying the above principle regarding liberal approach on the question of 'sufficient cause.'

30. In short, the applicability of the above principle regarding liberal approach on the question of 'sufficient cause' pre-supposes that the cause shown by the

appellant or the applicant has been found to be true, and the question to be considered is, as to whether such cause is sufficient or not. In case, the cause shown by the appellant or the applicant is itself found to be untrue, no question of adopting liberal approach in deciding such cause to be sufficient or not, arises.

23. Similar view was expressed by this Court in an earlier decision in Mohd. Ilyas v. Smt. Shamim Akhtar and Ors. 2004 (3) ARC 657, (paragraphs 48, 49, 50, 51 and 52), while dealing with the words 'sufficient cause' occurring in Order IX, Rule 13 of the Code of Civil Procedure.

24. In view of the provisions of Section 5 of the Limitation Act, 1963 and in view of the above decisions of this Court, it is evident that sufficient cause should be shown by the appellant or the applicant for not preferring the appeal or making the application within the period prescribed. In other words, the appellant or the applicant is required to show sufficient cause for the delay in filing the appeal or the application. Therefore, the following two things are required to be shown:

(1) There was a cause for the delay in filing the appeal or the application.

(2) The cause was sufficient cause.

25. In case the appellant or the applicant is able to establish cause for the delay, the next question to be considered would be as to whether such cause is sufficient cause or not. At the stage of considering sufficiency of the cause, the Court is required to adopt liberal attitude. However, if the cause shown by the appellant or the applicant itself is not believed, there is no occasion for considering sufficiency of such cause or for adopting liberal view in the matter.

26. In the present case, as noted above, the respondent No. 1 has disbelieved the cause shown by the petitioners for condoning the delay. The finding recorded by the respondent No. 1, in my view, cannot be said to be perverse. The respondent No. 1 has considered the material on record and has concluded that the version given by the petitioners in the delay condonation application was unbelievable. In the circumstances, there was no occasion for the respondent No. 1 to go into the sufficiency of the cause shown by the petitioners or to adopt liberal view in the

matter.

27. In view of the above discussion, I am of the opinion that the writ petition lacks merits, and the same is liable to be dismissed.

The writ petition is accordingly dismissed.

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