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Court : Allahabad

Decided On : Jul-21-2004

Reported in : AIR2005All1; 2005(1)AWC657

Judge : S.N. Srivastava, J.

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

Appeal No. : Civil M.W.P. No. 1500 of 2003

Appellant : Maksood and anr.

Respondent : Upper District Judge liird and ors.

Advocate for Def. : R.N. Yadav, S.C.

Advocate for Pet/Ap. : I.J.S. Yadav, ;R.K. Sinha and ;A.K. Sinha, Advs.

Disposition : Petition allowed

Judgement :

ORDER

S.N. Srivastava, J.

1. Impugned herein is the order dated 18-12-2002 passed by Addl. District Judge, Azamgarh whereby two applications one paper No. 6 C2 moved for condonation of delay and another paper No. 4C 2 praying for restoration of Misc. Appeal bearing

No. 100 of 2000 to its number which had been dismissed for default on 15-1-2002, came to be rejected.

2. According to the facts forthcoming on record, the Misc. Appeal aforesaid had been set down for 4-12-2001 on which date, application for grant of time was made. Thereafter, the petitioners were intimated by their counsel that next date fixed in the case was 15-2-2002 while the date fixed in the case was 15-1-2002 on which date the appeal had already been dismissed for want of prosecution. It is stated by the learned counsel for the petitioners that when the petitioners turned up on 15-2-2002, it was cognized to them that the appeal had been dismissed for want of prosecution on 15-1-2002 and therefore, the same day the petitioners moved the two applications aforesaid one for condonation of delay and another for restoration of Misc. Appeal to its number. The two applications aforesaid lingered for decision before the Court and on 18-12-2002, the Court below dismissed the two applications as being time barred.

3. The learned counsel for the petitioners propounded that application for restoration was dismissed as barred by time notwithstanding the fact that delay of one day was too insignificant to matter considering that cogent and convincing grounds showing sufficient cause in two applications which were attended with affidavits had been set out. It was further canvassed that the substantive ground urged explaining one day's delay was that the petitioners went by information furnished by their counsel that the appeal had been fixed for 15-2-2002 and therefore, they could not turn up on the date fixed and instead, turned up in the case on 15-2-2002. Per contra, learned counsel for the Opp. Parties propped up the order stating that the applications were rightly rejected as time barred as the delay was deliberate and leniency if any in the matter would be misplaced and in antagonism of the spirit of the law of limitation.

4. The question that emerges for consideration in the instant case is whether 'sufficient cause' test has been properly applied considering the grounds set out in the affidavits accompanying the two applications. In connection with the propositions aforesaid, I would first acquaint myself with the provisions contained in Section 5 of the Indian Limitation Act of 1963, which is abstracted

below.

'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 satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period.'

The standard test in such matter is 'sufficient cause' and it can be inferred from the aforestated section that the intendment underlying the Act is to enable the Courts to do even-handed and substantial justice and the matter may be disposed of on merits in preference to approach, which scuttles a decision on merits. In the case in hand, it has been clearly averred in the affidavits that the petitioners were erroneously intimated about the date fixed in the case and instead of appearing on 15-1-2002, the petitioners turned up on 15-2-2002 and the same day, on being made aware of dismissal on appeal on 15-1-2002, they moved the application for restoration which was barred by only one day's delay. From a perusal of the impugned order, it is revealed that the Court below wandered into technicalities inasmuch as it was swayed by the insubstantial arguments that the affidavit initially bore the name of Maqsood which had cutting and name of Mahfooz alias Hitler was overwritten which was not authenticated by the Oath Commissioner concerned. The grounds urged in the order which prevailed with the Court in rejecting the application, are too meretricious to warrant a view that delay of one day was deliberate and with the avowed object of protracting and overreaching the finality arrived at in the matter. The approach of the Court cannot be said to be liberal or an approach which does not scuttle a decision on merits.

5. In *Collector, Land Acquisition, Anantnag v. Katiji*, AIR 1987 SC 1353, the Apex Court was seized of similar controversy although in different context. In the said case, the Apex Court was concerned with four days' delay in institution of the appeal arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose by the State of Jammu and Kashmir, which had been rejected by the High Court of Jammu and Kashmir. In para 3 of the said decision, the Apex Court dealing with Section 5 of the Limitation Act observed that the

Legislature has conferred the power to condone delay in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The Apex Court further observed that 'the expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose of the existence of the institution of Courts'. It was further quipped by the Apex Court that 'it is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court but the message does not appear to have percolated down to all the other Courts in the hierarchy'. The Two Judge Bench gleaned following principles for the liberal approach being adopted by the Apex Court in such matters.

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' 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.

6. Reverting to the facts of the present case, it would crystallise from a perusal of the impugned order that there was no convincing or cogent reasons for the Court below to have disallowed restoration application notwithstanding the fact that the petitioners had fully explained one day's delay in filing the application. I fully endorse the view held by the Apex Court that 'refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated and that when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The approach of the Court in such matters should be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause' in order to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.

7. In the above conspectus, I converge to the view that the lower appellate Court has not appreciated the grounds in support of one day's delay in correct perspective which were quite plausible and convincing and erroneously rejected the two applications on hypertechnical considerations in preference to do even-handed justice to the parties on merits.

8. In the result, the petition succeeds and is allowed and the impugned order dated 18-12-2002 is quashed. In the facts and circumstances, the restoration application 4 C 2 and delay condonation application 6 C 2 shall stand allowed and Misc. Appeal shall stand restored to its number. The matter is relegated to the appellate Court attended with the direction to decide the appeal on merits after giving opportunity of hearing to both the parties preferably within a period of three months from the date of production of a certified copy of this order.