

Mannu Ram and anr. Vs. Additional District Judge

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Court : Allahabad

Decided On : May-02-1998

Reported in : 1999ACJ1035

Judge : D.K. Seth, J.

Appeal No. : Civil Misc. Writ Petition No. 13118 of 1998

Appellant : Mannu Ram and anr.

Respondent : Additional District Judge

Advocate for Def. : A.K. Mukherji, Adv.

Advocate for Pet/Ap. : Ashish Srivastava, Adv.

Judgement :

D.K. Seth, J.

1. Leave is granted to the learned Counsel for the petitioners to convert this petition into one under Article 227 of the Constitution. Learned counsel for the petitioners shall take steps to amend the cause title course of today.

2. The claim petition of the petitioners being Claim Case No. 23 of the 1990 before the Motor Accidents Claims Tribunal, Ballia, was dismissed in default on 12.8.1992. It appears that an application for restoration was filed on 29.10.1992.

The said application was registered as Application No. 74 of 1992. The restoration application was dismissed in default on 27.5.1994. A restoration application against the said order was filed on 11.7.94, which was registered as Case No. 3-A of 1994. By an order dated 18.11.1997 the said application was rejected. All these orders have since been challenged in this petition.

3. Mr. Ashish Srivastava, the learned Counsel for the petitioners, contends that the court below had taken a very technical view of the matter and, therefore, learned Judge had failed to exercise jurisdiction vested in him. Mr. B.K. Sinha, learned Counsel holding brief of Mr. Mukherji appearing on behalf of respondent No. 4 on the other hand, contends that the petitioners appeal to be habitual defaulters and had not been able to establish sufficient cause and, therefore, the said application was rightly dismissed.

4. I have heard both the learned Counsel for the parties and have perused the records. In the order dated 18.11.1997 the learned court below had recorded that it is mandatory to require each day's explanation under Section 5 of the Limitation Act. This principle now stands changed because of the subsequent decision in the case of Collector, Land Acquisition, Anantnag v. Katiji, AIR 1987 SC 1353, wherein it was held that each day's delay is not the requirement, but there must be substantial explanation of the delay.

5. In the said case, the Apex Court has held as follows:

(3) The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to the parties by disposing of the matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserve the ends of justice that being the life-purpose for the existence of the institution of courts. 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. And such a liberal approach is adopted on principle as it is realized that:

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

(2) Refusing to condone the 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 the 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. After perusing the documents, I have come to a finding that delay has been explained sufficiently. I have also perused the application filed on 29.10.1992, where sufficient grounds have been mentioned. The court appears to have taken a view contrary to what has been laid down in the said decision.

7. In that view of the matter, the order dated 18.11.1997 passed by the learned District Judge in Misc. Case No. 3-A of 1994 is hereby set aside. In view of the observations made above, the order dated 27.5.1994 passed in Application No. 74 of 1992 and 12.8.1992 passed in Motor Accident Claim Case No. 23 of 1990 are hereby set aside. The claim case is restored to file. The learned court shall decide the case in accordance with law as early as possible, preferably within a period of two years without being influenced by any of the observations made above.

8. With the above observations, the writ petition is disposed of. There will, however, be no order as to costs.

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