

Kuldip Singh Vs. Krishan Kumar and ors.

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Court : Delhi

Decided On : Jan-25-1973

Reported in : AIR1974Delhi111; 9(1973)DLT250; 1973RLR288

Judge : Prithvi Raj, J.

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

Appeal No. : C.M. 1128-J. of 1972 in S.A.O. No. 192 of 1972

Appellant : Kuldip Singh

Respondent : Krishan Kumar and ors.

Advocate for Def. : G.N. Aggarwal and ; H.S. Dhir, Advs.

Advocate for Pet/Ap. : S.S. Chadha and; P.N. Sethi, Advs

Judgement :

1. On 11th October, 1972, when S. A. O. 192 of 1972 was taken up for arguments, a contention was raised by Shri Gopal Narain Agarwal, learned counsel for respondent No. 1 that, the said appeal was barred by limitation. That being so, the learned counsel for the Petitioner after obtaining time, filed an application (C. M. 1128-J of 1972) under Section 38(2) of the Delhi Rent Control Act, 1958 (herein to be called 'the Act') read with Rule 23 of the Rules framed under the Act and Section 5 of the Limitation Act, for condensation of delay in filing the certified copy

of the order of the Additional Rent Controller (herein to be called 'the Controller').

2. This appeal is directed against the judgment dated 11th April, 1972, passed by Shri Gian Chand Jain. Rent Control Tribunal, Delhi. Along with the appeal an application under Order 42, Rule 2 read with Section 151, Civil P.C. was filed seeking exemption from filing the certified copy of the order dated 30th October, 1969, Passed by the Controller, as also from filing certified copy of grounds of appeal taken before the Tribunal. The submission in the said application was that an application for obtaining certified copy of the order of the controller had been filed with Copying Agency but that the said copy had not so far been delivered to the Petitioner. In the circumstances, exemption, from filing the certified copy was claimed. That application was allowed by my order dated 11th July, 1972, when the appeal came up for admission.

3. Certified copy of the order passed by the Controller was filed in the Registry on the 8th August, 1972. by Shri Amarjit Singh. Advocate, through a forwarding letter of the aforesaid date.

4. Contention of Shri G. N. Agarwal, learned counsel appearing for respondent No. 1, is that the certified.

copy which was required to be filed along with the memorandum of appeal as required by Rule 2-B of Chapter 1 of Volume V of the Rules and Orders of Punjab High Court, as applicable to this Court, having been filed after the expiry of the Period of limitation for filing the appeal, the appeal has become barred by time and is liable to be dismissed as such.

5. The impugned judgment was delivered by the Tribunal on 11th April, 1972. The appeal, therefore, could be filed within a period of 60 days from the date of the said judgment as prescribed by S. 39(1) of the Act. From the certified copy of the judgment filed along with the memorandum of appeal, it transpires that the copy of the impugned judgment was applied for on 19th April, 1972, and was attested and delivered on 9th June, 1972. therefore, a period of 52 days was taken for procuring the certified copy of the impugned judgment, being the period requisite for obtaining copy of the impugned judgment which period the appellant is entitled

to add to the period of limitation to be computed for filing the appeal. In other words. the appeal shall be within limitation if filed within a Period of 112 days from the date of impugned judgment. It is a settled law that the date on which the judgment is delivered is not to be counted towards the period of limitation. The period of 112 days has to be computed from 12th April, 1972. which expired on 1st August, 1972. There is no dispute that if the appeal had been filed by 1st August, 1972, other requirements of law being complied with, the appeal would have been within limitation. In the instant case, the appeal was filed on 10th July. 1972 i.e., well within the period of limitation.

6. The appeal came up for admission on the 11th July 1972, and. as already noted earlier C. M. 690 of 1972 was filed under Order 42, Rule 2, read with Section 151, Civil P. C. Praying that filing of the certified copy of the order of the Controller dated the 30th October, 1969, be dispensed with for the present. This application was accepted by me vide order dated the 11th July, 1972. However. Certified copy of the order of the Controller was filed in the Registry on 8th August, 1972, and. as already noted above, it is on this basis that Shri Gopal Narain Agarwal, learned, counsel for respondent No. 1. urged that the appeal had become barred by limitation and deserves to be dismissed as such. The appellant accordingly took time for filing an application seeking condensation of delay in filing the certified copy of the order of the Controller. It is under these circumstances that the present application was filed for condensation of delay in filing the certified copy of the order of the Controller.

7. In this application it has been urged that the Petitioner had filed an application on 19th April, 1972, for obtaining the certified copy of the order dated the 30th October, 1969, Passed by the Controller but the Petitioner during the course of marriage of his nephew misplaced the slip issued by the Copying Agency as a result whereof despite his various attempts he could not locate the said slip before filing of the appeal against the impugned judgment. It was under those circumstances that the appellant-petitioner had filed an application under Order 42, Rule 2, read with Section 151, Civil P. C. along with the appeal making a prayer that he exempted from filing the certified Copy of the order of the Controller. However, the petitioner has stated that the number and date of making the

application for obtaining the certified copy of the order of the Controller could not be given in the application filed under Order 42, Rule 2, read with Section 151, Civil P. C. as the same was not available with the petitioner having been misplaced by him. The petitioner has further urged that on 24th July. 1972, he found the said slip lying in one of the books at his residence and took delivery of the judgment of the Controller from the Copying Agency on the same date. He went to the office of his counsel on the 25th July. 1972, and handed over the copy to the clerk of the counsel, Shri S. S. Chadha, Advocate, for filing in the Court. Shri. Rattan Lal. clerk of the counsel, kept the said copy on his table along with other papers and assured the Petitioner that he would affix the necessary court-fee stamp thereon and file the same in the Court. The petitioner avers that he left the office of Shri S. S. Chadha, without meeting the learned counsel on that date. It is further averred in the application that after the case was adjourned during the course of hearing of the appeal on the 11th October, 1972. when objection regarding limitation was taken, he made enquiries from Shri Rattan Lal, clerk of Shri S. S. Chadha, as to why the certified copy of the order in question was not placed on the record within time. It was on this enquiry of the petitioner that Shri Rattan Lal told the petitioner that he had placed the certified copy on his table but by a mistake the same had been filed in some other brief unintentionally and under a bona fide belief that the said file was of the present appeal. The petitioner further alleges that on 7th August, 1972, the clerk of the learned counsel while checking up the files of some other cases, came across the Certified copy of the order in question and he took out the same from the said brief and the next day he asked Shri Amarjit Singh, Advocate, who was assisting Shri S. S. Chadha, to prepare a covering letter to enable the clerk to file the said copy in the Registry. Shri Rattan Lal, however. did not inform Shri S. S, Chadha about this. The petitioner, therefore, contends that an application under Section 5 of the Limitation Act read with Section 39(2) of the Act could not be filed along with the certified copy of the order in question, Praying for condensation of delay in filing the same. In the circumstances, the petitioner has submitted that he was diligent enough in pursuing his remedy and in obtaining certified copy of the order of the Controller in time but that the same could not be placed on the record due to the reasons beyond his control and for the reason that Shri Rattan Lal, clerk of Shri S. S.

Chadha, due to rush of work had misplaced the said copy in some other brief. That being so, the petitioner has submitted that mislaying of the certified copy on the part of Shri Rattan Lal, clerk of his counsel. cannot be regarded as showing any negligence on his part.

8. In the background of the above facts the petitioner has proved that the delay in filing the certified copy of the order of the Controller be condoned. The application is supported by the affidavit of the petitioner as also by the affidavit of Shri Rattan Lal. clerk of Shri S. S. Chadha, Advocate.

9. Respondent No. 1 in his reply to the application traversed the contentions of the petitioner stating that the allegations made therein seeking extension of time are wrong.

10. From the certified copy of the order passed by the Controller it is apparent that the application for obtaining the certified copy was filed on 19th April, 1972. The said copy was attested on the 13th June, 1972.

11. Shri G. N. Aggarwal, learned counsel for respondent No. 1. contended that the facts as now set out in the present application are in variance with the facts already brought on the record in C. M. 690 of 1972. Had it been a fact, it was averred, that the receipt issued by the Copying Agency was misplaced by the petitioner as is now alleged in the present application, the said fact would have been stated in C. M. 690 of 1972. But on the contrary all that is stated in the said application is that the application for obtaining certified copy of the order dated 30th October, 1969. had been filed with the Copying Agency but the same had not so far been made available to the petitioner. It was further contended that from the date of attestation recorded on the certified copy by the Copying Agency it is evident that the same was ready for delivery on the 13th June, 1972, on which date it appeared to have been issued but having not filed the said certified copy along with the memorandum of appeal as required by Rule 2-B of Chapter 1 of Volume V of High Court Rules and Orders, the petitioner wants to take advantage of his own negligence by making out altogether a new case that he had mislaid the receipt issued by the Copying Agency on account of the marriage of his nephew and that he came across the said receipt on the 24th July. 1972, only. It was, therefore,

contended that no ground has been made out by the petitioner to show indulgence for condoning the delay.

12. As already discussed above, the appeal if filed on 1st August, 1972, would have been within time. Now the contention of the petitioner is that he took delivery of the certified copy of the order of the Controller on the 24th July, 1972 and that on the next day, he went to the office of his counsel. Shri S. S. Chadha, and handed over the same to his clerk, Shri Rattan Lal for being placed on the record. The submission that the copy was obtained by the petitioner 24th July, 1972, is supported by the affidavit of petitioner. Except for a denial by respondent No.1, there is no other material on the record to controvert the said contention. The least that respondent No.1 could do, was to examine an official from the Copying Agency Department to show that the copy was not delivered on the 24th July, 1972. In the absence of any such evidence on the record, I have no reason to disbelieve the affidavit of petitioner wherein he has stated that he took delivery of the certified copy in question on the 24th July, 1972. It is not comprehended as to why the petitioner in case he had taken delivery of the certified copy on 13th June, 1972, should not have filed the same along with the memorandum of appeal when the appeal was filed on the 10th July, 1972. That being so, the petitioner has to explain the delay from 1st August, 1972 to 8th August, 1972, the date on which the certified copy was duly filed in the Registry. The said period of delay is explained by the fact that he had delivered the copy to the clerk of Shri S. S. Chadha on the 25th July, 1972, and the clerk due to the rush of work had bona fide mislaid the certified copy in the brief of another case thinking that he had placed the copy in the brief of the present appeal. This assertion of the petitioner is supported by the affidavit of Shri Rattan Lal, clerk of Shri S. S. Chadha. Shri Rattan Lal has further stated that on 7th August, 1972, when he was searching the briefs of other cases, he came across the certified copy in question and that the same was filed in the Registry through a forwarding letter of Shri Amarjit Singh, Advocate, on the 8th August, 1972. The said allegations have not been controverted. The question for determination, therefore, would be as to whether a party should suffer for the bona fide mistake committed by the clerk of his counsel. All that the petitioner could do was to apply for the certified copy and obtain it within time. There can be no dispute to the fact that

certified copy was applied for on the 19th April, 1972. The only dispute is whether the said copy was obtained on 24th July, 1972, as alleged by the petitioner or on a date earlier than that. There is no material on the record to controvert the submission of the petitioner that he in fact obtained the copy on the 24th July, 1972. In the circumstances, it has to be held that the certified copy was obtained by the petitioner on 24th July, 1972. The contention of the learned counsel for respondent No.1 that the affidavits filed by the petitioner and Shri Rattan Lal clerk of Shri S. S. Chadha, his counsel, are self serving affidavits, cannot be countenanced in view of the fact that there is no material on the file traversing the allegations made in the affidavits.

13. Shri G. N. Agarwal. learned Counsel for respondent No. 1'. vehemently contended that from a perusal of the certified copy it is evident that it was attested on the 13th June. 1972, on which date it was ready for delivery. It has, therefore. to be held, the learned counsel contended, that the delivery in fact was taken on the 13th June, 1972, and the petitioner in failing to file the said certified copy along with the memorandum of appeal cannot take advantage of his own negligence and seek indulgence from the Court for getting the delay in filing the certified Copy condoned.

14. I am unable to sustain this contention, as there is no material on record to return such a finding. The positive assertion of the Petitioner that he took the delivery of the certified copy in question on 24th July, 1972, remains uncontroverted and there is no reason to doubt the veracity of the said statement, in the absence of any material to contrary.

15. Shri Agarwal next contended that if it was a fact that the petitioner had misplaced the receipt issued by the copying agency. in the absence of which the petitioner could not obtain the certified copy as alleged by him now, this fact ought to have been mentioned in C.M.690 of 1972.The fact that no such submission was made in the above said application, Shri Agarwal contended, shows that the present version of the petitioner is not worthy of credence.

16. Merely because full details of the circumstances regarding the receipt issued by the Copying Agency having been mislaid by the Petitioner, having not been

given in C. M. 690 of 1972, would not Per se be enough to hold that the submission of the petitioner to the aforesaid fact in the present application is false and worthy of no credence. In C. M. 690 of 1972, the petitioner had pinpointedly averred that the certified copy of the order of the Controller was not supplied to him.

17. On the affidavits of the parties I am inclined to believe the petitioner that he obtained the certified copy in question on 24th July. 1972 and carried the same to, the office of his counsel where he left it with his clerk, Shri Rattan Lal, who put the copy in question in another brief thinking that the same was of the present appeal. The question, therefore, would be whether the mistake committed by the clerk of the counsel in these circumstances would constitute sufficient cause to entitle the petitioner to seek condensation of delay in filing the certified copy of the order of the Controller.

18. The submission of Shri Agarwal is that the mistake or negligence committed on the part of the clerk of the counsel does not stand on a higher plane than the mistake of a party; as such the delay in filing the certified copy of the order in question cannot be condoned by extending time under Section 5 of the Limitation Act. In support of his contention the learned counsel relied upon *Ganesh Dat v. Hirde Bihari*, . Reliance was also placed on *Inder Singh Des Rai v. Harnam Singh Gian Singh*, , in which a Division Bench of the Punjab High Court observed that the wrong advice of the clerk of a counsel in computing the Period for limitation for filing an appeal does not constitute sufficient cause so as to condone delay under Section 5 of the Limitation Act. Reliance was also placed on *Mst. Pana Bibi v. Mahla*, Air 1928 Lah 488 and *Shahadat v. Hukam Singh* Air 1924 Lah 401 in which it was observed that a mistake on the part of a counsel's clerk could not be considered a sufficient ground for extension of time under Section 5 of the Limitation Act and that carelessness, on the part of a clerk of a counsel could not be considered to constitute sufficient cause.

19. Shri Agarwal next relied upon *Gopal Patwa v. Digambar Singh*, : AIR1927 Pat232 in which a Division Bench of the Patna High Court observed that negligence of the agent was a negligence of the principal and that no distinction

could be made between the two. The learned counsel next relied upon *Mt. Mahtab Kuer v. Mt. Birhmo*, Air 1924 All 176 in which it was observed that gross negligence on the part of the party's agent and of the pleader's clerk did not constitute sufficient cause. In that case the appeal was decided on 28th March. Six weeks afterwards appellant's agent went to the pleader's clerk and deposited Rs. 6/- with him to obtain copies. A week later subordinate Courts closed for 30 days' vacation. Copies were not applied for till 27th June, i.e., a week later after the opening of the Courts. Copies were obtained on 3rd July. Copy of the judgment of the trial Court was not applied for till then. It was in those circumstances that the Court held that gross-negligence on the part of Party's agent or a pleader's clerk would not constitute sufficient cause.

20. In my opinion, no assistance can be drawn by respondent No. 1 from the above cited authorities as the observations made in the said authorities were on the facts and circumstances thereof. Each case has to be decided on its own merits. The Supreme Court in *Shakuntla Devi Jain v. Kuntal Kumari*, : [1969]1SCR1006 observed that the words 'sufficient cause' should be given a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. It was further observed that if the appellant made out sufficient cause for the delay the Court may in its own discretion condone the delay.

21. In the instant case all that was required to be done by the petitioner was to obtain the certified copy within time and hand it over to his counsel for being filed in the Court. In an earlier part of this judgment I have accepted the version of the petitioner that he obtained the certified copy of the order of the Controller on 24th July, 1972, and that he went to the office of his counsel the next day when he delivered the copy to the clerk of the counsel. To my mind, that was all which was required to be done by the petitioner. In the circumstances, the petitioner cannot be said to have committed any negligence. His act does not suffer from want of bona fide as he had handed over the certified copy in question well within time to the clerk of his counsel. That being so, I am of the opinion that if it be found that Shri Rattan Lal, clerk under a bona fide mistake and in the course of his duties due to the rush of work, had filed the copy in another brief. the petitioner cannot be

made to suffer for the mistake of the clerk of the counsel.

22. In *Lala Mata Din v. A. Narayanan*, : [1970]2SCR90 it was observed that in certain circumstances mistake of counsel may be taken into consideration in condoning the delay though there is no general proposition that mistake of a counsel by itself was always a sufficient cause.

23. In *State of West Bengal v. The Administrator, Howrah Municipality*, : [1972]2SCR874a it was reaffirmed that the words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction nor want of bona fides was imputable to a party. Further if a party had acted in a particular manner on a wrong advice given by his advocate he cannot be held guilty of negligence so as to disentitle the party to plead sufficient cause under Section 5 of the Limitation Act.

24. The principle deducible from the above said two Supreme Court authorities is that for the mistake of the counsel or his clerk a party cannot be made to suffer when no negligence. nor inaction. nor want of bona fides is imputable to a party. In other words, in appropriate cases, mistake of a counsel or his clerk can be Justifiably taken into consideration for condoning the delay.

25. In *Hanuman Dass v. Pirthvi Nath*, : AIR1956 All677 a Division Bench of the Allahabad High Court observed that expression 'sufficient cause' should be so construed as to advance substantial justice. It was also observed that the negligence of a lawyer or his clerk may be enough to constitute sufficient cause for the failure to initiate proceedings within the prescribed time. Further it was observed that the overriding consideration being the doing of substantial justice although the Court should not lightly condone the delay in Preferring an appeal or making the application it should do so only if there was sufficient or reasonable cause shown for the same.

26. In *Ramji Dass v. Kumara Kalathi Mudali*, Air 1932 Mad 142 it was observed that a bona fide mistake committed by a Vakil or his clerk with reference to the transaction of any business entrusted to them by a litigant would be a proper ground for excusing any delay under the Provisions of Section 5 of the Limitation

Act and that the Party should not be made to suffer for their mistake. It was further observed that a Vakil cannot transact personally all the routine and mechanical items of business of the client and that various matters have to be dealt with in the usual course of business by the Vakil's clerk. In that case challan for depositing the amount was mislaid by the Vakil's clerk who was dealing with the Papers in the usual course of business of the Vakil. That being so, it was held by the Court that that was a case where the party should not be made to suffer when it was clear that the Party had done, in proper time, every thing that he was bound to do in respect of the matter.

27. In *Rangamma v. Honappa* Air 1955 Mys 64 it was observed that a bona fide fault of the clerk of a counsel would constitute sufficient cause and Party should not suffer for that.

28. In *Punjab University v. Acharya Swami Ganesh*, : AIR 1972 SC1973 the appeal filed was late by two days. The delay was due to the miscalculation made by the counsel for the appellant. The counsel filed an affidavit wherein he stated that the appeal was filed two days' after the period of limitation entirely because of his mistake. That was held, to be a good ground by their Lordships of the Supreme Court in condoning the delay in filing the appeal as it was held to be not a case of negligence but a bona fide mistake.

29. It has been firmly established that a bona fide mistake committed by a counsel or his clerk would constitute sufficient cause entitling a party to claim condensation of delay provided that no negligence, nor inaction, nor want of bona fides is imputable to a party. In the instant case, all that the petitioner was required to do was to obtain the certified copy within limitation and hand it over to his counsel for being filed in the case., This had been done by the petitioner who obtained the certified copy on 24th July, 1972. and went to the office of his counsel on the 25th July, 1972. where he rightly handed over the copy to the clerk of the counsel, as it was not required of him to hand over the same personally to the counsel as such routine types of things are handled by the clerk of a counsel. The petitioner having done what was required of him, cannot be said to have committed any negligence, nor want of bona fides or inaction can be imputed to him. In the circumstances,

what has to be determined is whether the act of Shri Rattan Lal, clerk of the petitioner's counsel in mislaying the certified copy in another brief due to rush of work as alleged by the said clerk in his affidavit, can be said to be in the normal course of his duties. There can be no manner of doubt that the receipt of the copy by Shri Rattan Lal from the petitioner was one of his normal duties and the Disability of the said copy being mislaid in another brief due to rush of work cannot be eliminated. If it is so, the petitioner cannot be made to suffer for a bona fide mistake on the part of Shri Rattan Lal.

30. Shri Rattan Lal in his affidavit has stated that the petitioner came to the office of Shri S. S. Chadha on the 25th July, 1972. and furnished the copy of the grounds of appeal taken before the Tribunal and copy of the order of the Controller to him for placing the same on the record. He took the said papers from the petitioner and kept the same on the table along with other papers. He has further stated that there was lot of rush of work with him at that time and he told the petitioner that he would file the papers in the Court after affixing the necessary court-fee stamps on the same. He has further stated that under the bona fide belief while filing the papers he put those papers in some other file taking the said file to be of the Present appeal. The next day when he wanted to file those Papers he could not locate them and started making frantic efforts to search the same but the same could not be located before 7th August, 1972. It was in the evening of 7th August, 1972. that he found that the said papers were mixed up with some other papers. He has also stated that Realizing the accidental omission on his Part and knowing that if he brought the said fact to the notice of Shri S. S. Chadha he will be snubbed. he did not bring the said, fact to the notice of Shri S. S. Chadha and asked Shri Amariit Singh, Advocate, who was assisting Shri S. S. Chadha to sign a covering letter for placing the said certified copy of the record and after obtaining the signature of Shri Amariit Singh he filed the certified copy in the Registry on 8th August, 1972. That being so, the only question is whether to accept or not to accept the statement on oath of Shri Rattan Lal that due to rush of work. he had mislaid the certified copy and was able to locate the same on the 7th August, 1972. As already noted in an earlier part of this judgment there is nothing on the record in rebuttal of this assertion of Shri Rattan Lal made on solemn affirmation which, in the circumstances has to be accepted as correct.

31. In C. M. 102 of 1968 in F. A. O. 25 of 1968 (Delhi), Prime Products Ltd v. Union of India decided on the 5th August, 1968. T. V. R. Tatachari, J., had accepted a similar contention as a bona fide mistake on the part of a clerk for having mislaid the certified copy. In that case, the learned Judge observed that from the record it appeared that there was heavy rush of work during the Period during which the certified copies were received and apparently that was the reason for mislaying the Papers by the senior clerk of the counsel. In the circumstances, the learned Judge observed that there was sufficient cause for condensation of the delay in filing of the appeal. The application for condensation of delay was allowed.

32. Shri G. N. Agarwal, learned counsel for respondent No. 1. next vehemently contended that only such time as was reasonably requisite for obtaining the certified copy could be allowed to the petitioner and that the provisions of Section 5 of the Limitation Act cannot be used to put a premium for the avoidable delay and laxity on the part of a litigant. There is no force in this contention as the circumstances of this case. as discussed above, are entirely different. The delay in the present case occasioned due to the bona fide mistake of the clerk of the counsel.

33. It was next contended by Shri Gopal Narain Agarwal that according to the Provisions of sub-section (2) of Section 39 of the Act the application for seeking condensation of delay had to be filed at the time when the appeal was filed. No such application having been filed at the time the present appeal was filed, the application is incompetent. I afraid there is no merit in this contention as well. At the time the appeal was filed. the petitioner had moved C. M. 690 of 1972 seeking exemption from filing certified copy of the order in question alleging that the same had been applied for but was not made available to the petitioner. The delay however was occasioned on account of mistake committed by Shri Rattan Lal.

34. For the reasons stated above the application is accepted and the delay in filing the certified copy of the order of the condoned. In the circumstances, however, there shall be no order as to costs.

35. Order accordingly.

