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Union of India Vs. Shiv Darshan Singh (Sh.) and ors.

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Court : Delhi

Decided On : Apr-30-1999

Reported in : 1999IVAD(Delhi)226; 79(1999)DLT572; 1999(50)DRJ547; ILR1999Delhi367; (1999)122PLR15

Judge : Devinder Gupta, ACJ and; K.S. Gupta, J.

Acts : Limitation Act, 1963 - Sections 5

Appeal No. : C.M. 376/99 in FAO (OS) 24/99

Appellant : Union of India

Respondent : Shiv Darshan Singh (Sh.) and ors.

Advocate for Def. : Mr. R.K. Aggarwal, Adv.

Advocate for Pet/Ap. : Mr. Sanjay Poddar, Adv

Judgement :
ORDER

K.S. Gupta, J.

1. In this appeal filed against the order dated 25th May 1998 of a learned single Judge defendants 1 to 3/appellants have filed C.M.376/99 under Section 5 of the Limitation Act read with Section 151 CPC seeking condensation of 167 days delay

in filing appeal.

2. It is alleged in the application that the certified copy of the judgment under appeal was applied on 14th July 1998 and the same was prepared on 21st July 1998. This court remained closed with effect from 1st June 1998 to 7th July 1998. Thereafter, there was change in the Government panel and the appellant after taking legal opinion from the Department, approached the Department of Law and Justice for appointment of a Government counsel. The Government counsel was appointed vide order dated 7th September 1998. The files of the case were handed over on 8th September 1998 to the Government counsel who prepared the draft appeal and gave the same to the Department on 22nd September 1998. Draft appeal after vetting and approval from the competent authority was again handed over to the Government counsel on 2nd November 1998 for final preparation. The same was again given by the Government counsel for signatures to the appellants on 26th November 1998. It is stated that the appellants have got a strong case on merits and they were prevented by ufficient cause in not filing the appeal within the limitation period. Application is supported by the affidavit of D.K.Bazzaz, Deputy Land and Development, Nirman Bhawan, New Delhi.

3. Said application came up for hearing on 3rd February 1999 on which date Shri R.K. Aggarwal put in appearance on behalf of the respondents and accepted notice and the case was postponed to 9th February 1999. In the meantime aforesaid D.K.Bazzaz in support of the application for condensation of delay filed an additional affidavit dated 6th February 1999. It is averred therein that Shri P.N. Mishra, standing counsel was contacted on 26th May 1998 and 8th June 1998 and he intimated that he would obtain the certified copy of the impugned order after summer vacations. Shri Mishra on being contacted again in the first week of July 1998 informed that he has resigned as Government counsel. After the copy of the order under appeal was made available on 21 July 1998, the file was referred to the Ministry of Law & Justice for their advice on 23rd July 1998. Ministry of Law & Justice on 28th July 1998 desired to obtain the opinion of the Government counsel in the matter. In the meantime Smt. Neera Aggarwal was appointed as Government counsel in the case on 20th July 1998. On request of the Department she furnished her opinion on 31st July 1998. File was referred to the Ministry of

Law & Justice on 3rd August 1998. Ministry of Law & Justice on 4th August 1998 desired to send the full facts of the case. Thereafter file was referred to the Ministry of Urban Affairs & Employment seeking their approval to file the appeal and after approval file was received back on 13th August 1998. File was again referred to the Ministry of Law & Justice on 24th August 1998 and the same was received back from there on 26th August, 1998 advising to file appeal. On 28th August 1998 Assistant Legal Advisor, Ministry of Law & Justice, Litigation Section, Delhi High Court, requested to appoint Additional Solicitor General for filing the appeal. Ministry of Law & Justice appointed Shri Sanjay Poddar as Government counsel on 7th September 1998 and the draft of appeal was handed over by him to the Department on 22nd September 1998. Draft appeal was referred to the Ministry of Law & Justice on 25th September 1998. In consultation with the Assistant Legal Advisor of the Ministry of Law & Justice the draft appeal was revised on 23rd October 1998. Revised draft appeal was handed over to the Government counsel on 2nd November 1998. Revised draft was returned by the Government counsel on 26th November 1998. Revised draft appeal was again sent to Ministry of Law & Justice on 1st December 1998. After vetting the revised draft appeal was returned by the Ministry of Law & Justice on 2nd December 1998. File was again referred to the Ministry of Urban Affairs & Employment on 3rd December 1998 for obtaining their approval to the revised draft appeal. File was received back from there after approval on 7th December 1998. Fair copy of the memo of appeal duly was handed over to the Government counsel on 8th December 1998 and thereafter the appeal has been filed on 9th December 1998.

4. Needless to say that plaintiff-respondent No.1 has contested the application by filing reply wherein it is stated that the delay in question has not at all been satisfactorily explained by the appellants.

5. We have heard learned counsel of the parties and have been taken through the record.

6. Sole point which arises for determination is whether the facts disclosed by the appellants constitute sufficient ground for condoning the delay of 167 days in filing the present appeal. The decisions in Collector, Land Acquisition, Anantnag and

another Vs . Mst. Katiji and others : (1987)ILLJ500SC ; G. Ramegowda, Major etc. Vs . The Special Land Acquisition Officer, Bangalore : [1988]3SCR198 and State of Haryana Vs . Chandra Mani and others : 2002(143)ELT249(SC) , which are relevant for deciding the controversy in hand need to be referred. In these cases delay in filing the appeals was sought to be condoned by the State.

7. In Mst.Katiji's case (supra) it was held by the Supreme Court:-

'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 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 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.

p> 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 delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. 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.'

8. In G. Ramegowda Major's case (supra) while condoning delay of more than a year it was held:-

'In litigations to which Government is a party there is yet anther aspect which perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of the Government are collective and institutional decisions and do not share the haracteristics of decisions of private individuals.

The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different, complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

thereforee, in assessing what, in a particular case, constitutes 'sufficient 'cause' for purposes of Section 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, thereforee, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on Governmental functioning - of course, within a reasonable limit is necessary if the judicial approach is not rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making

process.'

9. Also taking note of the said two decisions it was held by a three Judge Bench of the Supreme Court in State of Haryana's case (supra) thus:-

'When the State is an applicant, praying for condensation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve but the State represents collective cause of the community. It is axiomatic that decisions are taken by officer/agencies proverbially at slow pace and encumbered process of pushing the file from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural redtype in the process of their making decision is a common feature. `Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression `sufficient cause' should, thereforee, be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit.'

10. It has not been shown that how the appellant in this case stand to benefit by resorting to delay. There is also no presumption that the delay has been occasioned deliberately. On the facts and circumstances of the case at the most it can be said that the file at various levels moved at a slow pace and there was a lethargic approach, but applying the ratio of the aforementioned decisions to the facts of the present case as disclosed in the affidavit and additional affidavit of aforesaid D.K. Bazzaz we are satisfied that sufficient cause has been made out by the appellants for condoning the delay in question in filing the appeal.

11. Consequently the delay in question is condoned. Application is disposed of accordingly.

12. List for admission on 13th May 1999.

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