

Union of India Vs. Jai Ram

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Court : Delhi

Decided On : Jul-21-1969

Reported in : ILR1969Delhi847

Judge : I.D. Dua and; S.K. Kapur, JJ.

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

Appeal No. : Civil Miscellaneous Appeal No. 235 of 1969

Appellant : Union of India

Respondent : Jai Ram

Advocate for Pet/Ap. : D.K. Kapur,; J.R. Singh and; Raj Kumari, Advs

Judgement :

I.D. Dua, J.

(1) This application under section 5 of the Limitation Act seeks extension of the prescribed period for presenting R.F.A. 170 of 1969 (Union of India v. Jai Ram) in this Court. On 28-4-1969, H.R, Khanna, J., while admitting the appeal, made the following order:-

'NOTICEin appeal and C.M. D.B.C.M. should be put up before the printing of the records.'

(2) In spite of a clear direction that the civil miscellaneous was to be placed before a Division Bench, the office placed the same before a learned Single Judge who directed the same to be placed before a Division Bench because refusal to grant extension of time would necessarily mean dismissal of the appeal.

(3) The facts as stated in the application may now be noticed. The judgment/award sought to be appealed from was made by a learned Additional District Judge on 23-12-1967. An application for a certified copy thereof was made on 15-1-1968 and it was ready on 22-1-1968. On the appellant's own showing, as stated in the application, the limitation for filing the appeal expired 30-3-1968. The appeal was presented in this Court on 18-3-1969. The grounds given in the application may now be reproduced as stated therein:-

'3. That the copy of the judgment which was to be delivered to the office of the Executive Engineer, Delhi Aviation Division No. II was by mistake sent by the office of the Land Acquisition Collector to other place and in this process it could reach the office of Executive Engineer, Delhi Aviation Division No. II on 18-4-1968. 4. That the limitation had expired by that time and this case was one of the large number of cases arising out of the same award, the matter had to be referred to the Additional Standing Counsel who gave his advise that the amount of enhancement should be deposited in the Court of Land Acquisition Collector. 5. That in the meantime, large number of other judgments in the other cases arising out of the same award were given by the court of Additional District Judge which were connected with this appeal and therefore, the department was required to take decision on such a large number of cases regarding the filing of appeals and deposit of enhanced amounts. 6. That while dealing with such a large number of cases in which about 50 appeals were filed in this Hon'ble Court and similarly opposite sides filed almost same number of appeals arising out of the same award and in this rush of work and in view of the Act that opinion had to be obtained from the Ministry of law, this appeal could not be filed till..... 7. That the award of the Land Acquisition Collector has in fact been challenged in about one hundred appeals which have been filed in this Hon'ble Court and in most of the judgment/awards, the learned Additional District Judge has relied upon the judgment in this case i.e. L.A. Case No. 793 of 1965.'

(4) The principal argument addressed at the Bar on behalf of the appellant is that in the peculiar circumstances of this case, the dispatch of the copy of the judgment by mistake to some other place constitutes a sufficient cause as contemplated by section 5 of the limitation Act and in any event, it is argued that since this award is relied upon as a precedent in a number of other cases, in which compensation is awarded for the land acquired by the Government, this Court should, in the interest of justice, extend the period of limitation. It is emphasised that if this appeal is not heard on the merits, there is likelihood of conflicting judgments and, therefore, the larger cause of justice requires that the delay in this case be condoned. Section 5, Limitation Act, it is submitted, deserves to be liberally construed so as to enable the appellant to secure a decision on the merits of this appeal from this Court.

(5) We are unable to allow the present application for extension of limitation as prayed. Section 5 of the Limitation Act provides, so far as relevant for our purposes, that an appeal may be admitted after the prescribed period if the appellant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The Explanation to this section lays down that the fact that the appellant 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. This Explanation has not been relied upon in support of the appellant's prayer for extension of period. It seems to me now to be accepted as settled on high authority that the person seeking condensation of delay under section 5 of the Limitation Act has to explain each day's delay. It is true that the failure of the appellant to account for his non-diligence during the whole of the period of limitation prescribed for the appeal does not disqualify him from praying for the condensation of delay under section 5 of the Limitation Act, but for the delay after the expiry of the prescribed period, he must render Explanation as mentioned above so as to enable the Court to consider whether or not, in its judicial discretion, to extend the period of the duration of the delay. For this purpose, the Court has to bear in mind that the expiration of the prescribed period of limitation for preferring an appeal gives rise to a right in favor of the person in whose favor the impugned judgment or decree is made to treat the same as binding between the parties thereto. The expiry of the period of

limitation renders the impugned judgment and decree beyond challenge and this right, acquiring as it does to the opposite party because of lapse of time, should not be disturbed for inadequate reasons. As against this, the Court has of course also to keep in view that the discretion given to it to condone the delay and admit the appeal is inspired by the anxiety to advance the cause of substantial justice. The party guilty of delay has, therefore, to show a sufficient cause for excusing his lapse which means that there must be something akin to a mishap beyond his power or control in spite of the exercise of due care and attention. The argument normally advanced that the expression 'sufficient cause' is intended to receive a liberal construction, has its inherent limitations because liberal construction does not mean that delay should be condoned as if automatically, even though it has been caused by negligence, unjustified inaction or want of due care and attention, for, in that event, it would be unjust and harsh on the party against whom the order condoning the delay is to operate. This provision it may be remembered, is intended to advance the larger cause of justice. The matter has indeed to be approached from a practical point of view without ignoring common human failings, but holding the scales of justice even between the contesting litigating parties. The fact that the party seeking extension of period is a department of Government does not seem, for that reason alone, to make any material difference on the language of the section. The statute plainly treats all parties alike and the State is not entitled in this respect to any concession more than a private party. The expression 'sufficient cause' does not demand a more liberal construction merely because the party in default is a Government department. This factor may, however, legitimately be kept in view when determining the question of sufficient cause from the point of view of the time reasonably required by the Government department in deciding whether or not to prefer an appeal. But this consideration must not be unduly inflated because, for one thing, the Legislature has not directed a preferential treatment of State appeals and secondly the Government has ample resources for legal aid, the only question to be adverted to in such cases is whether or not there has been a proper diligent attention with the requisite sense of anxiety on the part of the officer whose duty it is to look after the litigation.

(6) In the present case, as is quite obvious, no Explanation has been given as to which officer sent the copy of the judgment by mistake to 'other place'; nor has it

been explained as to how did this mistake occur and to which 'other place' the papers were sent. The application is equally wanting in material for showing as to when the judgment was so sent, when the mistake was discovered and what steps were taken and on which dates, for the purpose of securing speedy legal advice whether or not it was advisable to prefer an appeal. The entire relevant material on these points should have been placed before this court so that not only the truth of this version may be judicially determined but also it may be considered whether the facts pleaded, if true, would constitute sufficient cause for condoning the delay as contemplated by section 5. The usual practice which, in my opinion, should normally be followed in Government cases is that the counsel who represents the State or its department in a cause, immediately on securing a copy of the judgment or order, advises the department concerned, with his reasons, as to whether or not, in his opinion, the appeal should be preferred against it. The matter is thereupon taken up by the department with the requisite earnestness and diligence so that if it is resolved to file the appeal the entire process necessary for presenting the appeal within the prescribed period of limitation is finalised. Any inactivity on the part of the Government Department in this respect, which may be indicative of negligence or even of undue indifference to the question of presenting the appeal within limitation, may tend to impose a heavy burden on the department of showing sufficient cause to the satisfaction of the Court. It may be remembered that the decision on this point is of the Court and not of the department which is bound to place the entire material before the Court for its judicial decision.

(7) In the case in hand, we are far from satisfied on the material on the record that there was any sufficient cause for the presentation of the appeal to be delayed till 18-3-1969, nearly a year after the expiry of the prescribed period of limitation.

(8) The submission that the impugned judgment may conclude the question of price of land in future cases, is hardly relevant for determining the question of sufficient cause as contemplated by section 5, Limitation Act, though we are doubtful if the impugned judgment would conclude the point as is suggested. We must not, however, be understood to express any opinion on the value of this instance on the question of price in future cases which will have to be judicially decided when raised. If the appeal fails on the question of limitation then this

Court's decision cannot be considered to be a decision by this Court on the merits on the question of the price of the land.

(9) This application is, for the reasons foregoing, disallowed with costs which we fix at Rs. 100.00.

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