

Kuldip Singh Vs. Krishan Kumar

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Court : Delhi

Decided On : Jan-20-1972

Reported in : 1973RLR274

Judge : Prithivi Raj, J.

Acts : Limitation Act - Sections 5

Appeal No. : Civil Miscellaneous Appeal No. 1128J of 1972

Appellant : Kuldip Singh

Respondent : Krishan Kumar

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

Judgement :

Prithivi Raj, J.

(1) The appellant could file appeal up to 1 8.72. He filed the same on 10.7.72 and made an application that copy of the order of trial court which had been applied for and not delivered may be allowed to be filed later. This application was allowed. Appellant obtained the copy on 24.7.72 and handed over the same to his lawyer's clerk next day for filing in Court. The said clerk due to rush of work mislaid the copy by putting the same in some other brief and he found the same on 7.8.72 by means of a covering letter of his lawyer's assistant. The case was taken up for

arguments on 11.10.72 when the respondent took the preliminary objection that the appeal should be dismissed as the copy of the order of trial court was filed beyond time. Appellant was granted time to meet the objection by filing an application. He did so and in support filed his affidavit and that of his lawyer's clerk. High Court discussed the cases Ganesh Datt vs. Hirde Belari AIR. 1925. Oud. 189; Iner Singh Des Raj Vs . Harnam Singh Gian Singh ; Mst. Pana Bibi v. Mohla & Ors. AIR. 1928. Lah. 488; Shahdat & Ors v. Rukam Singh Atr 1924. Lab. 401; Copal Patar Vs Digambar Singh AIR. 1927. Pat. 232; Mst. Mahatab Kaur v. Birhamo & Ors. AIR. 1922. 176 and observed in para 19 of the judgment onwards thus :-

(2) In my opinion, no assistance can be drawn by respondent No. 1 from the abovesited 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. Kunthi Kumari and others : [1969]1SCR1006 . observed at 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.

(3) 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 the judgment 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 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.

(4) In *Lota Mata Din v. A. Narayanan*, 1969 (2)S. C. C. 770, 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.

(5) In *State of West Bengal v. The Administrator, Howrah Municipality and others*, 1972 S.C.C 266, it was re-affirmed 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 party. Further if a party had acted in a particular manner on a warning 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.

(6) 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. *other : 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 to preferring an appeal or making the application and that it should do so only if there was sufficient or reasonable cause shown for the same.

(7) In *Ramji Doss v. Kumara Kalathi Mudali and others* A.I.R. 1932 Madras 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 dealing with the papers in the usual course of business of the Vakil. That being so, it was held by the Court 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.

(8) In Rangamma v. Honappa and others A.I.R 1955 Mysore 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.

(9) In the Punjab University v. Acharya Swami Ganesh and another, 1972 PL.R. 908. 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 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.

(10) It has been firmly established that a bonafide mistake committed by a counselor or his clerk would constitute sufficient cause entitling a party to claim condonation 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, 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 possibility 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 bonafide mistake on the part of Shri Rattan Lal.

(11) Shri Ratan Lal in his affidavit has stated that the petitioner came to the office of Shri S.S. Chada 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 bonafide 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 Amarjit Singh, Advocate, who was assisting Shri S.S. Chadha to sign a covering letter for placing the said certified copy on the record and after obtaining the signature of Shri Amarjit 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.

(12) In C.M. 102 of 1968 in P.A.O. 25 of 1968, Prime Products Ltd., v. Union of India, decided on the 5 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 teamed 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.

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