

Krishan Lal Vs. Hanuman

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Court : Delhi

Decided On : Jan-28-1993

Reported in : 1994IAD(Delhi)554; 53(1994)DLT360

Judge : Arun Madan, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 14

Appeal No. : Civil Miscellaneous Appeal No. 470 of 1993 and Civil Revision Appeal No. 139 of 1993

Appellant : Krishan Lal

Respondent : Hanuman

Advocate for Pet/Ap. : Manish Malhotra,; Y.R. Grover and; Sunita Aggarwal, Adv

Judgement :

Arun Madan, J.

(1) By the present application filed under Section 5 read with Article 14 of the Indian Limitation Act, the petitioner is seeking condensation of delay in filing the revision petition.

(2) Briefly, the facts of the case are that the suit filed under Section 6 of the Specific Relief Act was decreed vide judgment and decree dated 20th March,

1991 passed by the Ms. Ravinder Kaur, Sub Judge, 1st Class, Delhi against the petitioner herein. The petitioner was advised to file the appeal against the said judgment and decree and the said appeal was filed within the period of limitation. When the appeal came up for hearing on 5th February, 1993 before the learned Additional District Judge, Delhi, an objection was raised about the maintainability of the appeal on the ground that the appeal arose from the judgment and decree in a suit filed under Section 6 of the Specific Relief Act. The petitioner made a statement before the Court of learned Additional District Judge, Delhi for withdrawal of the appeal with liberty to file a revision petition in the appropriate Court. The learned Additional District Judge dismissed the appeal as withdrawn with permission to the petitioner to file a revision petition in the appropriate Court. The appeal was dismissed as withdrawn on 5th February, 1993 and the revision petition along with the present application for condensation of delay was filed. There has been a delay of about two years in preferring the revision petition before this Court.

(3) During the course of arguments, learned Counsel for the petitioner submitted that the provisions of Section 14 (1) and (2) of the Limitation Act are applicable to the facts of the case, the said Section reads as under:-

'(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another Civil proceeding, whether in a Court against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another Civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.'

(4) In support of the said contention of the learned Counsel for the petitioner, it is contended that the basing on the legal advise which he has received from his

Counsel in good faith, his Counsel has preferred an appeal in the Court of the Additional District Judge, Delhi instead of preferring revision before this Court.

(5) On 26th May, 1993 when the matter came up before this Court (Usha Mehra, J.) Counsel for the respondent had raised preliminary objection about the maintainability of this revision petition on the ground that the same is barred by time and the mistaken advice of the lawyer is no ground to condone the delay particularly when nothing has been alleged as to how the lawyer gave the mistaken advice, nor any affidavit in this respect has been filed with this revision petition.

(6) Learned Counsel for the petitioner has drawn my attention to the affidavit of Shri Arun Maitri, Advocate who was prosecuting the case of the petitioner in the Trial Court as well in the Appellate Court. It has been specifically averred by the learned Counsel that an appeal on behalf of Shri Krishan Lal was filed before the Court of Additional District Judge, Delhi which was registered as R.C.A. No. 11 / 91 titled as Krishan Lal v. Shri Hanuman and the same was filed under the bonafide belief that the appeal is maintainable and immediately after Realizing the bona fide mistake. Counsel for the petitioner withdrew the said appeal and the appeal was accordingly dismissed as withdrawn by the Court of Adj on 5.2.93 with the liberty to take appropriate proceedings under the law.

(7) That the deponent was never aware that in such matters, the appeals are not maintainable and only on account of the ignorance on the part of the deponent, the said mistake occurred and there was no intention as such to delay the proceedings in any manner.'

(8) Learned Counsel for the petitioner in support of his arguments has placed reliance on the decisions of the Supreme Court in the matter of M/s. Concord of India Insurance Co. Ltd., v. Smt. Nirmala Devi and Others, : [1979]118ITR507(SC) , Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others, : (1987)ILLJ500SC , Vijay Kumar Rampal and Others v. Diwan Devi and Others, : AIR 1985 SC1669 and Punjab Financial Corporation v. Gobind Industrial Corporation, 2 (1991) BC 459. The ratio of the said decisions is that the expression 'good faith' qualifies prosecuting proceedings in the Court which

ultimately is found to have no jurisdiction. In the case of Collector, Land Acquisition (supra) the Apex Court has observed:-

'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. 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 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. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.'

(9) In M/s. Concord of India Insurance Co. (supra) the Apex Court has observed that 'the Court must of course, see whether in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause when an application under Section 5 of the Limitation Act is being considered. The State has not acted improperly in relying on its legal advisers.'

(10) In view of the aforesaid decision, learned Counsel for the petitioner has argued that there are sufficient grounds for condensation of delay and in the

interests of substantial justice delay deserves to be condoned. Learned Counsel for the respondent has controverted the stand of the petitioner on the ground that there exists no ground for condoning delay in view of the fact that the petitioner was not diligent in pursuing his remedy and that he was aware that revision lies against the impugned judgment and decree but instead of pursuing the correct remedy of filing the revision petition had filed appeal which was dismissed as withdrawn by the Court of Additional District Judge, Delhi with liberty to take appropriate proceedings under the law. He has also contended that the petitioner has not taken any specific objection with regard to the maintainability of the suit under the Specific Relief Act. He has placed reliance on the provisions of Section 6(3) of the Specific Relief Act, 1963, which deals with suit by person dispossessed without his consent of immovable property. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this Section, nor shall any review of any such order or decree be allowed. Relying on this provision, the learned Counsel for the respondent has argued that since there is specific bar to the filing of appeal from any order or decree, the same should not have been filed and, therefore, in the absence of 'good faith' and 'sufficient cause' which has not been specifically mentioned in the application for condensation of delay, the present application is not maintainable. In support of his arguments, the learned Counsel has placed reliance on in the case of Babu Ram v. Devinder Mohan Kaura and Others, Air 1981 Delhi 14, Kankala Gurunath Patro v. Dhanu Patro, : AIR1984 Ori173 and Jagannath Prasad v. Sant Hardasram Sevashram and Others, : AIR1978 All250 . The ratio of the said decisions is that the mistake on account of wrong advice of a Counsel does not constitute sufficient cause and good faith in absence of disclosure of the basis of the mistaken legal advice which should enable the Court to see whether the advice tendered was bona fide or reckless.

(11) The law has undergone tremendous change subsequent to the aforesaid decisions. The Courts are expected to adopt liberal approach in such like matters where condensation of delay is prayed for, in the interest of substantial justice rather than strictly adhering to the technicalities. In this case no malafide has been alleged or attributed against the petitioner. On the contrary the petitioner has placed reliance on the supporting affidavit of the Counsel who filed the appeal in

the Court of Additional District Judge, Delhi wherein it has been contended that the appeal was filed under bona fide belief as the same was maintainable and no sooner he realised his bona fide mistake, the said appeal was withdrawn from the Court of Additional District Judge, Delhi with liberty to take appropriate proceedings under the law.

(12) In view of the aforesaid proposition of law notwithstanding the fact that there has been a delay of about two years in prosecuting the proceedings, which the petitioner had been prosecuting diligently with bona fide belief and good faith, I am of the opinion that the delay deserves to be condoned. The delay in filing the revision petition is accordingly condoned subject to payment of Rs. 2,000 .00 as costs. C.M. No. 470 of 1993 is allowed. C.R. No. 139/93 ' List the revision petition for preliminary hearing on 9th February, 1994. Appeal allowed.

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