

Ram Narayan Singh Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-04-1978

Reported in : 1978WLN(UC)185

Judge : M.L. Joshi and; M.C. Jain, JJ.

Appeal No. : D.B. Special Appeal No. 23 of 1969

Appellant : Ram Narayan Singh

Respondent : The State of Rajasthan and ors.

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. This special appeal Under Section 18 of the Rajasthan High Court Ordinance is directed against the order of the Single judge of this Court dated 21-2-1969 passed in S.B. Civil writ petition No. 1205 of 1964, whereby the learned Single judge quashed acquisition proceedings subject to certain reservations.

2. The facts may be recalled in brief : The present appellant and his brother Birbal Singh claimed to be the 'Khatedars' of agricultural land in dispute, which were recorded in their name in their joint 'Khata'. The acquisition proceedings in respect of the disputed lands were initialed and necessary notification Under Sections 4,

5(2) and 6 of the Rajasthan land Acquisition Act 1953, were issued in respect of which it was averred that the writ petitioners have no knowledge. In the acquisition proceeding the Land Acquisition Officer gave two awards on 28-11-59. In the writ petition the validity of the notification issued Under Section 4 and 5(2) of the aforesaid Act and so also the validity of the second award was challenged. The learned Single Judge found that the notification issued Section 4 of the aforesaid Act was not valid and eventually the acquisition proceedings were quashed, but as the respondents Nos. 7 to 9 were put in possession of some portion of the land, it was directed that the allotment of the land made by the State in their favour will remain intact and the second award was also quashed. Aggrieved against this order the present special appeal has been preferred by Ram Narayan Singh on 22-4-1969. Along with this appeal, an application Under Section 5 of the Limitation Act has also been filed accompanied with an affidavit of the appellant Ram Narayan Singh.

3. In this appeal the learned Government Advocate has urged that the appeal is time barred and there is no sufficient cause for condonation of delay, in view of this submission, we have heard both the sides on the question of limitation.

4. It is not dispute that the period of limitation for filing of the special appeal is 30 days and there was is delay of 24 days. The learned Counsel for the appellant, however, submitted that the appellant was given to understand that the period of limitation for filing leave to appeal to Supreme Court was 60 days, as advised by his counsel Shri Harnath Calla. Land acquisition writ petitions used to be heard by the Division Bench and against the order of the Division Bench, leave to appeal to the Supreme Court used to be filed. The writ petition No. 1205/61 was heard by a Single Bench, but still the appellant was advised that leave to appeal is to be preferred within 60 days, so acting under the advice of the senior counsel, the appeal could not be preferred within 30 days. The learned Counsel also referred to the correspondence exchanged between appellant, his brother and the appellant's learned Counsel Shri Harnath Calla on the basis of which it was submitted that there were no laches, in action or negligence on the part of the appellant. Rather the appellant was in the bonafide belief that leave to appeal is to be preferred within 60 days, so on this ground, the appellant claimed condonation

of delay of 24 days by an application Under Section 5 of the Limitation Act The learned Counsel urged that there is an uncontroverted affidavit of the appellant which clearly makes cut that there was sufficient cause which prevented the appellant from filing the appeal in time and what ever delay is caused in filing die appeal may be condoned.

5. The learned Government Advocate opposed the application Under Section 5 of the Limitation Act and urged that the sole affidavit of the appellant is unreliable. It cannot be believed that the senior counsel like Shri Harnath Calla would have advised that the period of limitation for filing special appeal is 60 days against the order of a Single Judge From the relevant post card dated 3-4-69 (Ex. 5) it cannot be found that any such advice was given by Shri Calla. Rather from this letter it appears that he asked the appellant's brother Birbal Singh to inform the appellant to come to Jodhpur if he intends to prefer an appeal. It was further contended that from the side of the appellant no affidavit of Shri Harnath Calla, which was absolutely necessary in the circumstances of the case, was filed [n the absence of the affidavit of Shri Harnath Calla it cannot be found as a fact that Shri Harnath Calla advised the appellant that the appeal can be preferred within a period of 60 days As such, no sufficient cause is made out so the appellant cannot claim the benefit of Section 5 of the Limitation Act.

6. Before dealing with the contention advanced before us it would be proper to take notice of the relevant fact stated in the application Under Section 5 of the Limitation Act. It was alleged that similar writ petition were presented by Messers (1) Harish Chandra, (2) Ranvir Singh, (3) Badri Prashad and (4) Dhankanwar and it was informed by Shri Hirnath Calla by his postcard dated 23-3-1968 that Bidri Prashad has been granted leave to appeal to the Supreme Court and he also informed by another post-card dated 31-12-68 that the arguments on the petition of Harish Chandra, Ranvir Singh & Badri Prahad for leave to appeal to the Supreme Court will be beard on 3-1-69 & by the same post-card he was also informed that his case will be hearted shortly by a Division Bench consisting of Hon'ble Bhandari & Hon'ble Tyagi JJ., so the appellant was under the impression that his writ petition would be heard by the Division Bench. On 22-2-1969 a post-card was sent by Shri Calla to the appellant informing him to send Rs. 30/- for

obtaining the copy of the judgment and he was also informed that he had succeeded in the writ petition to this extent that he would continue to re-ruin in possession of the land which is his occupation and for the rest he would get compensation. By another letter dated 30-4-1969 addressed to the appellants elder brother Birbal Singh it was communicated that the copies of the orders of Shri Birbal Singh, had been received so he may immediately come and it was also stated in this letter that Shri Ram Narayan Singh had expressed his desire to submit an application for leave to appeal to the Supreme Court & so he may be informed and that if he wanted to prefer an appeal he may come to Jodhpur. By letter dated 6-4-1969 addressed to Shri Birbal Singh, it was informed that Ram Narayan Singh left Jodhpur after staying for a day without informing him, though the copies were received next day, and he was further asked to immediately come and see Shri Harnath Calla. This letter was written by Shri Shivram Calla, who is said to be a clerk of Shri Harnath Calla. Apart from this, correspondence on which reliance is placed by the appellant it was stated in the writ petition that the appellant's brother Shri Birbal Singh came down to Jodhpur on 10-3-1969 and took steps for optioning the certified copies. Thereafter on 14-3-1969 the appellant himself came to Jodhpur and told Shri Calla that he was keen to apply for leave to appeal to the Supreme Court and Shri Calla told him that the limitation for leave to appeal to the Supreme Court is 60 days and he paid Rs. 10/- for making the deficiency of the copying charges. It was also told that the preparation of copies would take its due time and he would inform him to come back for submitting the application for leave to appeal to the Supreme Court and thereafter the post-card dated 3-4-69 was sent to him. It may be stated that against the order of the learned Single Judge there was no question of filing the application for leave to appeal to the Supreme Court, but only a special appeal could be preferred against the order of the Single Judge for which the period of limitation is only 30 days. From the notes of presentation it is evident that the order appealed against is dated 21-2-69, date of presentation of special appeal is April 22, 1969, the intervening period between the date of judgment and date of presentation of appeal is 60 days. The limitation of filing of appeal is 30 days in which the period of 6 days is to be added on account of obtaining the certified copy. The total period thus to be excluded is 36 days out of 60 days and in this manner the appeal is late by 24

days.

7. Now it is to be seen as to whether there is sufficient cause with the appellant for condonation of delay.

8. Before taking into consideration the facts and circumstances of the present case it would be proper to consider the relevant law on the subject, as laid down and considered by the Supreme Court.

9. The Supreme Court in *Ramlal v. Rewa Confields Ltd.* : [1962]2SCR762 observed as under:

In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion had been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chattapan* 1890 I.L.R. 13 Mad. 269, Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the word 'sufficient cause' receiving a liberal construction so as to advance substantial justice when negligence nor inaction nor want of bonafide is imputable to the appellant.

xx xx xx xx xx xx xx The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone.

10. In the State of West Bengal v. The Administrator, Howrah Municipality and Ors. etc. : [1972]2SCR874a , their Lordships of the Supreme Court observed as under:

The legal position, when a question arises Under Section 5 of the Limitation Act is fairly well settled. It is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' Under Section 5 of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to 'sufficient cause' or not. It is needless to emphasise that courts have to use their judicial discretion in the matter soundly in the interest of justice.

11. In the case of State of West Bengal (supra) the Supreme Court also considered a decision of the Judicial Committee of the Privy Council in Kunwar Rajendra Singh v. Rai Rajeshwar Bali A.I.R. 1937 P.C. 276 wherein it was laid down that if a party had acted in a particular manner on a wrong advice given by his legal Adviser, he cannot be held guilty of negligence so as to disentitle the party to plead sufficient cause Under Section 5 of the Limitation Act. The Judicial Committee of the Privy Council observed as follows:

Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice.

12. From what has been considered above it would be clear that party seeking condonation of delay is required to make out a 'sufficient cause', and the sufficient cause should be proved which is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court Under Section 5 of the Limitation Act. In case the party fails to prove the 'sufficient cause', the question of exercise of

such discretionary jurisdiction Under Section (sic) does not arise From the facts and circumstances of each individual case it is to be found as to whether sufficient cause is made out or not.

13. The question that emerges for consideration in the present case is, as to whether am mistaken or wrong advice was given by Shri H.N. Calla to the appellant as alleged in the application. It is true that there is an uncorrupt borated affidavit of the appellant Ram Narayansingh, but in the circumstances of the case the appellant ought to have filed the affidavit of Shri Harnath Calla, who was the best person to swear as to what advice was given by him. But his affidavit has not been placed on record. From the order of the Single Judge previously special appeal could be filed within a period of 60 days, but since 1-6-65 after the amendment in Rule 134, the period of limitation was curtailed from 60 days to 30 days. Thus from this date the period of limitation for filing special appeal was only 30 days and not 60 days. It cannot be received that a counsel of a standing like Shri Harnath Calla, was not aware that the period of limitation is 30 days for filing an appeal against the order of a Single Judge. It was very well known that the order was passed by a Single Judge in the writ petition. As the writ petition was heard by a Single Judge, the question of filing an application for leave to appeal to the Supreme Court did not arise at all and it cannot be accepted that Shri Harnath Calla would at all advise that against the order of a Single Judge application for leave to appeal to the Supreme Court would be filed.

14. The learned Counsel for the appellant referred to a decision of this Court *Kusmchand v. Kanhaiyalal* 1973 R.L.W. 378. It is also a case where the special appeal was filed beyond 30 days. but if the facts of that case are taken into consideration it would be evident that there was an affidavit filed by Shri N.M. Kasliwal, Advocate, in which it was stated that when he was engaged to prefer the appeal he consulted the Rajasthan High Court Rules as amended upto 1963 and copy of the High Court Rules published in 1967 edition of the All. Rajasthan Local Acts, volume V, published by Shri Sarjoo Prashad & others and he found that Rule 134 contained the period of limitation for special appeals as 60 days and he informed his client accordingly. From these facts; it would appear that, Shri Kasliwal consulted a book published in 1967, which, it appears, was not upto date

amended. It was on this basis he advised the period of limitation to be 60 days. On the basis of such advice in that case the appellant acted bonafide and it was held that there was sufficient cause for condoning 4 days delay in the presentation of the appeal. The facts of Kusumchand's case, in our opinion, are clearly distinguishable from the present case in as much as no affidavit of Shri Harnath Calla has been filed in this case. His affidavit, in our opinion, was indispensable and was a must so that it could be known that what advice was given to the appellant. Further from the letter dated 3-4-69 it cannot be said that Shri Calla in fact gave any such advice as is deposed to by the appellant. Else, it would not have been stated in that letter by Shri Calla that the appellant may come if he wants to prefer an appeal. It appears from this letter 3-4-1969 that there may be two different matters, in respect of one leave to appeal was to be filed and in the other appeal was to be filed. Else there, would ODC have been reference of both. In any case in the absence of affidavit of Shri Harnath Calla, the affidavit of Shri Ram Narayan Singh cannot be believed. Thus, the appellant has not been able to establish sufficient cause for condonation of delay. The provision contained in Section 5 of the, Limitation Act can be given liberal construction only when sufficient cause is proved.

15. On behalf of the appellant one another case of the Supreme Court Indian Statistical Institute v. Associated Builders and Ors. A.I.R. 1978 Supreme Court 335 has been referred. This case is of no assistance to the appellant. On the facts of this case it was found that there is no delay in presenting the objection petition against the award so Section 5 of the Limitation Act was found to have no application. It was a case of delay in re-presentation of the objection petition, which was returned for rectifying certain defects regarding affixing of requisite stamps and signatures for verification.

16. Thus from what has been discussed above in our opinion, the appellant has utterly failed to establish sufficient cause for condonation of delay and thus, is not entitled to seek condonation. The appeal having been preferred beyond time, deserves to be dismissed on the question of, limitation alone and we need not go into the merits of the appeal.

17. In the result we dismiss the appeal In the circumstances of the case we make no order as to costs of this appeal.

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