

Ms Heavy Engineering Coporation Ltd Vs. Gajendra Kumar Singh

Ms Heavy Engineering Coporation Ltd Vs. Gajendra Kumar Singh

SooperKanoon Citation : sooperkanoon.com/76567

Court : Jharkhand

Decided On : Aug-01-2016

Appellant : Ms Heavy Engineering Coporation Ltd

Respondent : Gajendra Kumar Singh

Judgement :

INTHEHIGHCOURTOFJHARKHANDATRANCHI C.M.P.No.442of2014 With I.A.No.876of2016
M/s.HeavyEngineeringCorporationLtd.,aRegisteredCompanyunderSection
617ofIndianCompaniesAct,havingitsofficeandworksatP.O.&P.S.Dhurwa, Plant Plaza Road, Ranchi 834004
through its ChairmancumManaging DirectoratH.E.C.Dhurwa,P.O.&P.S.Dhurwa,Dist.RanchiPetitioner Versus
GajendraKumarSingh,sonofShriHarishChandraNarayanSingh,residentof
Agrail(Dih),P.O.Champapur,P.S.BaligaonviaChandanPatti,DistrictVaishali (Bihar) ...Respondent CORAM:
HON'BLEMR.JUSTICED.N.PATEL HON'BLEMR.JUSTICEAMITAVK.GUPTA ForthePetitioner
:Mr.VishalKumarTrivedi,Advocate FortheRespondent :Mrs.M.M.Pal,Sr.Advocate Mrs.MahuaPalit,Advocate
08/Dated:1stAugust,2016 OralJudgement PerD.N.Patel,J.: I.A.No.876of2016 1.
ThisinterlocutoryapplicationhasbeenpreferredunderSection5ofthe LimitationActforcondonation ofdelayof
3349days in preferring thisCivil Miscellaneous Petition for restoration of L.P.A. No. 668 of 2004 which was
dismissedastheapplicanthadnottakenanystepsforfilingoftherequisitesetc.
forissuanceofnoticetotherespondent.TheorderofdismissalofL.P.A.No.668
of2004waspassedbytheDivisionBenchofthisCourton8thSeptember,2005.

2. Having heard learned counsels for both the sides and looking to the reasons stated in paragraphs 2 and 3 of this interlocutory application, as submitted by learned counsel for the applicant, there are no reasonable reasons for condonation of delay. For the ready reference, paragraphs 2 and 3 of this interlocutory application, which have been pointed out by the learned counsel for the applicant that paragraphs 2 and 3 are reasonable reasons for condonation of delay, read as under: 2

2. That it is stated that due to lack of communication of passing of the aforesaid judgment the petitioner failed to file the present L.P.A. within the stipulated time period.

3. That is is stated that the appellant/petitioner after consultation with the counsel/advocate applied for the certified copy of the order and thereafter the memo of appeal was prepared.

3. Looking to these paragraphs, there are no reasonable reasons for condonation of delay. The lack of communication of passing of the decision by the Division Bench of this Court and sometime has been consumed in getting the certified copy, are no valid reasons for condonation of delay. Moreover, nothing has been mentioned that on which date, application was preferred for getting certified copy and on which date, certified copy of the order dated 8th September, 2005 in L.P.A. No. 668 of 2004 was received. Thus, absolutely vague reasons are given in paragraphs 2 and 3. The applicant has not revealed

when it has got knowledge of the order passed in L.P.A.No.668 of 2004. Thus, absolutely vague reasons are stated in paragraphs 2 and 3 of this interlocutory application.

4. It has been held by the Hon'ble Supreme Court in the case of Postmaster General v. Living Media India Ltd., reported in (2012) 3 SCC 563 in paragraphs 25 to 30, which reads as under: 25. We have already extracted the reasons as mentioned in the better affidavit sworn by Mr Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in Office of the Chief Postmaster v. Living Media India Ltd. as 1192009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 8/12/2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11/9/2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 8/12/2010 i.e. after a period of nearly four months.

26. In spite of affording another opportunity to file a better affidavit by placing adequate material, neither the Department nor the person in charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except 3 mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps. 27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. 28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay. (emphasis supplied) 5. It has been held by the Hon'ble Supreme Court in the case of Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, reported in (2012) 5

SCC157inparagraphs24and25,whichreadsasunder:

24. What colour the expressions sufficient cause would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the causes shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the court cannot take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest. (emphasis supplied) 6.

It has been held by the Hon'ble Supreme Court in the case of Ajit Singh Thakur Singh v. State of Gujarat, reported in (1981) 1 SCC 495 in paragraph 6, which reads as under: 6

At the outset, it is urged by learned counsel for the appellant that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as barred by limitation. We have examined the facts carefully. It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired. A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation. The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed and that was long after limitation had expired that the case was fit for appeal by the State Government. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation.

In the present case, there was no such cause, and the High Court erred in condoning the delay. (emphasis supplied) 7.

It has been held by the Hon'ble Supreme Court in the case of Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, reported in (2008) 17 SCC 448 in paragraphs 15, 16, 17, 18, 19, 20, 23, 26, 27, 28, 29 and 31, which reads as under: 15. Whether the respondent had satisfied the Court that it had sufficient cause for not preferring the appeals within the prescribed time? Section 5 of the Limitation Act provides for extension of prescribed period of limitation in certain cases and confers jurisdiction upon the court to admit any application or any appeal after the prescribed period if it is satisfied that the appellant or the applicant had sufficient cause for not preferring such appeal or application within the prescribed period. 16.

In the present case the Reference Court passed the award under Section 18 of the Act on 9/3/2000. On 13/4/2000 itself the Government took decision not to prefer any appeal against the decree and award passed by the Reference Court and accordingly communicated its decision to all concerned including the respondent. The Government vide its Order dated 21/5/2001 refused to review its decision and

accordingly informed the same to the respondent beneficiary of acquisition. The respondent beneficiary in its application seeking condonation of delay refers to the Letter dated 19112003 issued by the Secretary, Irrigation Department, directing it to obtain legal advice from an advocate to initiate appropriate proceedings. The respondent instead of acting in the matter once again had chosen to address SLAO vide letter dated 622004 with a request to challenge the impugned judgment and award of the Reference Court. The same request was made by repeating reminders up to 1272004. On 1852004 the respondent beneficiary addressed a letter to the Collector requesting him to direct the Land Acquisition Officer to prefer an appeal. This correspondence continued upto 2162004. Thereafter, the application along with the appeal seeking condonation of delay was filed on 2522005.

17. The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is: Can the respondent applicant in this case take advantage of its negligence, after a lapse of number of years, of the decision of the Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court help those who are vigilant and do not slumber over their rights. 18. The question for consideration is whether the averments disclosed any sufficient cause to condone the inordinate delay of 1724 days in filing the appeals. 19. In *Ajit Singh Thakur Singh v. State of Gujarat* this Court observed:

6. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause. (emphasis supplied)

This judgment squarely applies to the facts in hand. 20. The respondent beneficiary of the acquisition did not initiate any steps whatsoever before the expiry of limitation and no circumstances are placed before the Court that steps were taken to file appeals but it was not possible to file the appeals within time. 23. On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The 6 averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise courts discretion in its favour. 26. Basically, the laws of limitation are founded on public policy. In *Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, Para 605*, the policy of the Limitation Acts is laid down as follows: 605. Policy of the Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence. 27. Statutes of limitation are sometimes described as statutes of peace. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This Court in *Rajender Singh v. Santa Singh* has observed: 18. The object of law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. 28. In *Tilokchand Motichand v. H.B. Munshi* this Court observed that this principle is based on the maxim *interest reipublicae ut sit finis litium*, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are

ameanstoensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

29.Itneedsnorestatementatourhandsthattheobjectforfixingtimelimit forlitigationisbasedonpublicpolicyfixingalifespanforlegalremedyfor thepurposeofgeneralwelfare.Theyaremeanttoseethatthepartiesdonot resorttodilatorytacticsbutavailtheirlegalremediespromptly.Salmondin his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

31.ItistruethatwhentheStateanditsinstrumentalitiesaretheapplicants seeking condonation of delay they may be entitled to certain amount of latitudebutthelawoflimitationissameforcitizenandforgovernmental authorities.TheLimitationActdoesnotprovidefordifferentperiodtothe Governmentinfilingappealsorapplicationsassuch.Itwouldbeadifferent matterwheretheGovernmentmakesoutacasewherepublicinterestwas showntohavesufferedowingtoactsoffraudorcollusiononthepartofits officersoragentsandwheretheofficerswereclearlyatcrosspurposeswithit. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict.Inthepresentcase,nosuchfactsarepleadedandprovedthougha feebleattemptbythelearnedcounselfortherespondentwasmadetosuggest collusion and fraud but without any basis. We cannot entertain the submissionmadeacrosstheBarwithouttherebeinganyproperfoundationin thepleadings. (emphasis supplied) 8. Inviewoftheaforesaidfacts,reasonsandjudicialpronouncements,this interlocutoryapplicationisdismissed.Thedelayisrefusedtobecondoned. 7 C.M.P.No.442of2014 9. ThisCivilMiscellaneousPetitionisalsodismissedasbarredbylimitation. (D.N.Patel,J.) (AmitavK.Gupta,J.) Ajay/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com