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Court : Chennai

Decided On : Jul-29-1982

Reported in : AIR1983Mad17

Judge : Balasubrahmanyan, J.

Acts : Limitation Act, 1963 - Sections 5; Code of Civil Procedure (CPC), 1908 - Order 41, Rule 21

Appeal No. : C.M.P. No. 1166 of 1982

Appellant : Balakrishnan

Respondent : Ayyaswami

Advocate for Def. : K. Govindrajan and V. Venkataswami, Advs.

Advocate for Pet/Ap. : N. Vanchinathan, Adv.

Judgement :
ORDER

1. This is an application for excusing the delay in filing a second appeal The judgment sought to be appealed from was passed by the First Additional Sub Court, Cuddalore. In that appeal, the petitioner was the respondent. The petitioner was not present in person or by counsel at the time when the appeal was called. Hence the appeal was heard and decided in his absence. The petitioner then filed

before the Sub Court an application under Order 41. Rule 21, C. P. C. to set said the ex party determination of the appeal. The petitioner explained that at the material time he was suffering from jaundice, and this illness prevented him from appearing at the hearing of the appeal. The Sub Court was not, however, satisfied with this explanation. It accordingly rejected the petitioner's application. The petitioner filed an appeal from that order to this Court in C. M. A. No. 617 of 1981. That appeal was heard and dismissed. A few days thereafter, the petitioner presented his second appeal in this Court from the ex party judgment and decree in the appeal. The overall delay in the filing of the second appeal has been calculated at 285 days.

2. In this petition before me under S. 5 of the Limitation Act. learned counsel for the petitioner submits that there was sufficient cause which prevented the petitioner from filing the second appeal within time. He urges that in judging the question of delay as well as the sufficiency of cause for the delay, regard must be paid to the period of time covered by the petitioner's proceedings under Order 41, Rule 21 both in the trial Court and in this Court. Learned counsel argues that when the police of the law is to make allowances for the time taken by a suitor to pursue remedies bona fide believed by him to be appropriate for obtaining the requisite relief, and when provision is specifically made in the Limitation Act, under Section 14 not to take note of delay occurring in such contingencies, the period of time during which the proceedings under O. 41, R. 21, were pending cannot be counted out against the petitioner while adjudging the real element of delay in the filing of the second appeal. Learned counsel submits that the present case must be regarded as a fortiori because in pursuing the remedy under O. 41, R. 21, the petitioner had something more as an extenuating circumstance than mere bona fides on his party, for the remedy that he pursued was indubitably available to him under the law, and he was entitled to pursue it without any one's leave. If these factors are taken into consideration, learned counsel points out, the delay cannot be put to 285 days, but at the most, 15 days or so. Learned counsel pleaded that some reasonable time would be required for the party to have the second appeal prepared and filed in this Court, and a fortnight in between can hardly be regarded as unreasonable.

3. I agree with the submissions made by the learned counsel for the petitioner. The Limitation Act prescribes in its Schedule periods of limitation for applications and appeals. The Schedule, considered in itself, is no respect of persons. The time-limits apply to one and all. Section 5 of the Act, however, provides that exceptions can be made by the court in individual cases where applications and appeals are filed beyond the period prescribed in the schedule. The requirement of this section is that the court should be satisfied that the party seeking its indulgence had sufficient cause for not preferring the appeal or application within the time limited. The provision does not lay down any standard test. It does not even require that the reason adduced by the party for the delay must be capable of being accepted by the court as sufficient cause by the application of any objective standard . On the contrary the section clearly contemplates that the court has got to place itself in the position of the person concerned and find out if the delay can be said to have resulted from the cause which he has adduced and whether that cause can be regarded, in the peculiar circumstances of his case, as sufficient. The test of sufficient cause, then, is a purely individualistic test and not an objective test. This as once means that no two cases can be treated alike. As a matter of general Court experience, most of the requests for condonation of delays in appeals and applications happen to be based on what may be described as the personal equation such as illness of the party, death in the family and the like. On this account, we cannot imagine that 'sufficient cause ' within the meaning of section 5 can be considered to exist only in such kinds of cases. Nor can we restrict the operation of this provision only to those cases where the party prevented by forces beyond his control from filing the appeal or application in time. For there is a sense in which a party can be prevented himself in various ways from filing the proceedings within time. The truth is that the statute of limitation has left the conception of 'sufficient cause' delightfully underlined, thereby leaving to the court a well-intentioned latitude of mind and discretion to decide in individual cases whether circumstances exist establishing sufficient cause. It may be said, in one sense, that the categories of sufficient cause are never closed. But, in another sense, as earlier indicated, there are no categories of sufficient cause: each case spells out a unique experience and has to be dealt with by the Court as such.

4. So far as the petitioner is concerned, he has satisfied me that he had sufficient cause for not preferring the appeal within the time limit. Although technically the delay is 285 days, it is quite clear that during all but the last 15 days the petitioner had been pre-occupied with proceedings under Order 41, Rule 21, C. P. C. which to him, had held out hopes of favourable orders all the while. The fact that those proceedings happened to go against him ultimately is no ground for disregarding the time-lag involved. Even the last 15 days, in my view, cannot be regarded as delay of a sort which will fall outside the benignant scope of S. 5.

5. Learned counsel for the respondent urges that the petitioner's application before the Sub Court under Order 41, Rule 21, Civil P. C. cannot provide sufficient cause for the delay in the filing of the second appeal, and that the petitioner ought to have filed it within time: even while pursuing the other remedy. This aspect is clearly out of place in the present discussion. If the petitioner had followed the course suggested. If the petitioner had followed the course suffested, he would not be here, would be, with his petition under Section 5 of the Limitation Act? When a party has not filed the appeal within the time and hence invokes the requisite powers of the Court to condone the delay, the argument that he ought to have filed the appeal within time is not a legal argument at all, since it does not contribute anything pertinent to the discussion on hand.

6. It is true that a party against whom an ex parte judgment has been rendered can only very well appeal from it to an appealable forum. But, when the Code grants him another remedy to move the same Court, which rendered the ex parte judgment for redress, he is in my judgement, not only entitled to pursue that remedy, but also entertain a reasonable hope of its success. It would be a sad commentary on O. 41 R. 21 and the rationale behind that provision if we were to hold that persons in the petitioner's position should put little or no faith in that remedy even while pursuing it. We may take it that the provision has been put into the body of the Code in all seriousness so that parties may resort to it wherever it is available. If the argument addressed for the respondent were to hold good. then that would not only have the effect of consigning this remedy into decrepitude but would also tend to undermine the very credibility of our Court system which is charged with administering the provisions. Be that as it may, the question for

decision in this case is whether there is sufficient cause for the petitioner filing the second appeal out of time, having particular regard to the proceedings taken by him under 0. 41. R. 21 and the inevitable time-lag they entailed. In my view, the very pendency of those proceedings furnished sufficient cause for the delay in the filing of the second appeal.

The petition is accordingly allowed but, in the circumstances, there will be no order as to costs.

7. Petition allowed.

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