Pathu Vs. State of Kerala

Pathu Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/849057

Court : Kerala

Decided On : Nov-06-2009

Judge : S.R. Bannurmath, C.J. and; A.K. Basheer, J.

Acts : Limitation Act - Section 5; ;Constitution of India - Articles 226 and 227

Appeal No. : WA. No. 2399 of 2009

Appellant : Pathu

Respondent : State of Kerala

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : Joseph Franklin, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Basheer, J.

1. Appellants claim that they are the legal heirs of the original claimant in L.A.R. No. 175 of 1994 which was admittedly closed by the Reference Court way back in December, 1995 for non prosecution by the claimant.

2. After about seven years, the appellants filed an application before the Reference Court as I.A. No. 3464 of 2002 under Section 5 of the Limitation Act to

condone the delay of 2435 days in filing the application for restoration of the reference case. The said application was dismissed by the learned Subordinate Judge by his order dated December 3, 2003, a copy of which is available on record as Ext. P1. The learned Subordinate Judge found that no proper explanation had been offered for the inordinate delay and that there was total laches and negligence on the part of the appellants. Therefore the application for condonation was dismissed.

3. The above order was challenged by the appellants before the learned Single Judge praying for invoking the jurisdiction under Articles 226 and 227 of the Constitution of India. The only prayer in the writ petition was to issue a writ of certiorari to quash Ext. P1 order passed by the Reference Court.

4. The learned Single Judge after adverting to the entire facts and circumstances of the case and the palpable laxity and indifference of the appellants held that the writ petition was totally misconceived and unsustainable. Accordingly the writ petition was dismissed. It is thus that the appellants are before us in this writ appeal.

5. As mentioned earlier, the reference was closed by the Reference Court way back in the year 1995. It appears, on two occasions unsuccessful attempts were made by the claimant to get it restored. Finally, after about seven years another attempt was made to get the reference re-opened. It is on record, that Ext. P1 order which is sought to be quashed in this proceeding was in fact challenged by the appellants in C.R.P. No. 1226 of 2004 which was dismissed by this Court. It was thereafter that the appellants have made the present attempt invoking the writ jurisdiction.

6. The contention now raised by the learned Counsel for the appellants is that the person who was in charge of the litigation was responsible for this unfortunate situation. We are unable to accept this contention.

7. Admittedly along with the reference in question, there were three other reference cases also, in which enhanced compensation was awarded. It cannot be believed that the original claimant who was common in all four reference cases did

not notice the closure of this reference case. Further, it is hard to believe that it took seven years for the appellants to come to know of the order passed in the Reference Case.

8. There is yet another aspect of the matter. Ext. P1 order was passed by the Reference Court on December 3, 2003. Even after the said order the appellants did not wake up from their slumber. They filed the present writ petition after a lapse of about six years. Significantly, no effort whatsoever has been made to explain the delay. This Court cannot and shall not show any sympathy to those who sleep over their rights. Discretionary jurisdiction under Article 226 of the Constitution cannot be invoked in aid of such litigants. We do not find any illegality in the order passed by the learned Single Judge.

9. Learned Counsel for the appellants has invited our attention to a decision of their Lordships of the Supreme Court in M.K. Prasad v. P. Arumugham : (2001) 6 SCC 176. While dealing with the power of the Court in condoning delay under Section 5 of the Limitation Act, their Lordships alerted the judicial authorities that the said discretionary power has to be exercised to advance substantial justice. The above proposition admits of no controversy. But in the facts and circumstances of this case in which there is a delay of more than 14 years, we do not find any justification or reason to exercise our discretion in favour of the appellants. Advancing the cause of justice is a concept which has to be understood in the context of rendering substantial justice to deserving parties; and it can never be a safety route to those who are totally indifferent and negligent. Law will never come to the aid of a litigant who has slept over his rights. We are not all satisfied that this is a fit case in which discretion of this Court can be exercised in favour of the appellants.

10. The writ appeal is totally devoid of any merit. Dismissed.