

Union of India and ors. Vs. Wood Crafts Products Ltd. and anr.

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Court : Guwahati

Decided On : Nov-28-2000

Judge : N.C. Jain, A.C.J. and ;A.H. Saikia, J.

Acts : [Limitation Act, 1963](#) - Sections 2 and 5

Appeal No. : Misc Case No. 276(T) of 2000 in W.A. No. 352 of 2000

Appellant : Union of India and ors.

Respondent : Wood Crafts Products Ltd. and anr.

Advocate for Def. : Dr. D. Pal and ;Mr. G.N. Sahewalla, Adv.

Advocate for Pet/Ap. : Mr. K.N. Choudhury, Adv.

Disposition : Misc. case is dismissed

Judgement :

ORDER

A.M. Saikia, J.

1. This is an application for condonation of delay of 118 days in preferring the Writ Appeal No. 352/2000 filed by the petitioners/ appellants, Union of India and others.

2. We have heard Mr. K.N. Choudhury, learned Senior counsel representing the petitioners as well as Dr. D. Paul, learned Sr. counsel appearing on behalf of the

respondents/O.Ps.

3. In the instant case, in order to explain the delay in preferring the said Writ Appeal, the petitioners averred the facts in paragraph No. 2 of the condonation petition which is reproduced as follows:

'That the petitioners state that the certified copy of the judgment and order dated 12.4.2000 could not be applied for immediately as the Court was on holidays on account of Bihu vacation from 13th April. 2000. On reopening of the Court the copy was applied for and the same was made over to the petitioners' counsel on 2.5.2000 by the Registry. The engaged counsel forwarded the certified copy to the office of the Assistant Commissioner, Central Excise, Guwahati on 3.5.2000. The office of the Assistant Commissioner, Central Excise, Guwahati forwarded the certified copy to the appellant/petitioner No. 2 on 4.5.2000 and the same was received by the petitioner No. 2 on 5.5.2000. The petitioner No. 2 after going through the judgment was of the view that it is a fit case for filing appeal. The decision to file appeal was taken in consultation with the higher authorities. Consequently, the petitioner No. 2 vide order dated 27.6.2000 gave approval for filing of appeal and pursuant to the said order dated 27.6.2000 made in the relevant file the office of the petitioner No. 2 vide letter No. C.V.3(3) 39/Law/96/15017 dated 4.7.2000 directed the Asstt. Commissioner, Central Excise. Guwahati to prefer an appeal. The said communication was received by the Guwahati office on 7.7.2000. In this connection it would be pertinent to state that the petitioner No. 2 also issued direction for engaging the present counsel instead of engaging the counsel who conducted the case before the learned Single Judge. Co-incidentally the present engaged counsel was out of station and returned to Guwahati on 27.7.2000. Immediately on 28.7.2000 the present engaged counsel was contacted and a request was made to prefer an appeal vide letter No.CV3(3) 28/LAW/ACG/96/195 Dated 24.7.2000. The engaged counsel after going through the documents instructed the departmental officers to provide some further documents/ information. The additional information sought for could not be provided immediately as the petitioner No. 2 was lying ill. However, the same was furnished to the engaged counsel vide letter No. C.V3(3) 28/Law/ACG/96/219-220 dated 25.8.2000. Thereafter, the engaged counsel

prepared the Memo of appeal and presented the same before this Hon'ble Court on 1.9.2000. It would thus appear that the delay from 2.5.2000 to 25.8.2000 was on account of departmental reason and the time 26.8.2000 to 1.9.2000 was taken by the engaged counsel for preparation and presentation of the Memo of appeal. In the process there has been delay of about 118 days.'

4. From a bare perusal of the above mentioned statements it is noticed that the delay from 2.5.2000 to 25.8.2000 was on account of departmental note making and file pushing, showing as departmental reason and time from 26.8.2000 to 1.9.2000, was taken by the engaged counsel for preparation and presentation of the Memo of Appeal. Needless to mention that no acceptable explanation was forthcoming as regards the fact as to who was the highest authorities with whom the petitioners had consulted for the decision to prefer the appeal. This Court was also not informed as to what type of ailments the respondents No. 2 was suffering from, compelling him to lie ill. Whether he was attending the office, that was not known.

5. The learned counsel for the petitioners has vehemently urged before us that when the State is an applicant for condonation of delay, it is common knowledge that on account of impersonal machinery, the delay on the part of the State is less difficult to understand. As the State represents collective cause, it is also not difficult to understand that decisions are taken by the officers/ agencies at slow pace causing unintentional delay and as such, the learned counsel for the petitioners submits that in such cases, certain amounts of latitude is permissible so that the expression 'sufficient cause' under section 5 of the Limitation Act, received a lateral construction and the requirement for explaining every day's delay should be construed with pragmatism and justice oriented approach. He further submits that the delay in the instant case is not intentional.

6. In order to substantiate his arguments, the learned counsel for the petitioner has taken the support of Apex Court's decision in Collector. Land Acquisition, Anant Nag v. Katiji and others, reported in AIR 1987 SC 1353. In the said case, it was held that the Court should adopt a liberal approach so as to advance substantial justice. When substantial justice and technical consideration 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 non-deliberate delay.

7. It appears that by virtue of the decision in the case of Katiji (*supra*), the Government and its instrumentalities are carrying an impression that the Law of Limitation is perhaps not applicable to them. The delay petition cannot be filed at leisure according to their convenience.

8. Relying on the views expressed in another case, viz. *State of Haryana v. Chandramoni*, AIR 1996 SC 1623, the learned counsel for the petitioners, submits that in the instant case, the collective responsibilities of the officers is required to be taken into consideration in the light of the facts that on account of impersonal machinery, inherited bureaucratic methodology imbued with note making, file pushing and passing of the buck ethos, some time is spent and, therefore, even if cogent explanation for 118 days' delay is not furnished, the same is liable to be condoned by taking liberal views. The case of *N Balakrishnamurthy*, reported in AIR 1998 SC 3222, has also been cited by the learned counsel for the petitioners and inviting our attention to paragraphs 11 and 12 of the said authority in which it was held that the law of limitation is not meant to destroy the right of the parties but to see that parties do not resort to dilatory tactics and seek their remedies promptly.

9. Dr. D. Paul, learned Sr. counsel appearing for the respondents, opposed the petition in equal vehemence. Placing a list of dates before us showing the events for explanation of the delay, the learned counsel pointedly submits that in terms of averments made by the petitioners that the certified copy of the impugned judgment dated 12.4.2000 was received by the Commissioner, Central Excise, Appellant No. 2, on 5.5.2000, and approval was given in the relevant file by the appellant No. 2 on 27.6.2000, to file an appeal against the impugned order and the said action has, clearly and manifestly, reflected that there is an unexplained delay of 1 month 23 days. Thereafter, on 4.7.2000, vide letter No. C.V.3(3)/39/Law/96/ 15017, the respondent No. 2 directed the Asstt. Commissioner, Central Excise, Guwahati, to prefer an appeal, that too taking seven days time. The said communication was received by the Guwahati office on

7.7.2000.

10. In the meantime, the counsel who was engaged by the petitioners was out of station and returned to Guwahati on 27.7.2000, and he was contacted on 28.7.2000. A request was made to the present counsel to prefer an appeal vide letter No. C.V.3(3)/29/Law/ACG/96/195 dated 14.7.2000. Thereafter, the said engaged counsel instructed the departmental officers to provide some other documents/informations which could not be provided immediately as the petitioner No. 2 was lying ill. However, the same was furnished to the engaged counsel only on 25.8.2000 when he prepared the Memo of Appeal and presented the same before the Hon'ble High Court on 1-9-2000. Harping the non-explanation of the delay adequately, Dr. Paul, the Sr. counsel, has submitted that the petitioners failed to inform the Court about the illness of the respondent No. 2 as mentioned in paragraph 2 of the condonation petition.

11. The learned Sr. counsel has urged that the explanation above-mentioned, put forward date-wise, cannot be termed as 'sufficient cause' for condonation of the delay. He strongly submits that there was no plausible and reasonable explanation for such delay and no good cause is present. The learned counsel relied upon the authorities of the Apex Court in:

(1) Union of India v. Visveswaraya Iron & Steel Ltd., AIR 1987 SC 669;

(2) Union of India & others v. Vidarbha Veneer Industries, 1994 Supp (2) SCC 696;

(3) Ajit Singh Thakur Singh & others v. State of Gujrat, AIR 1981 SC 733; and

(4) P.K. Ramachandra v. State of Kerala, AIR 1998 SC 2276.

12. In Visveswaraya Iron & Steel Ltd. (supra), the petition for condonation of delay preferred by the Union of India was rejected as no cogent ground was made out for condoning the delay. The Apex Court held in Visveswaraya (supra) that mere statement that the relevant file was lost or misplaced for quite some time in the office, cannot be held to be sufficient cause for condoning the delay. The case of Ajit Singh Thakur (supra) is not applicable in the present case in the facts and

circumstances of the said case.

13. In P.K. Ramachandran 's (supra) case, one of the latest decisions of the Supreme Court, the Hon'ble Dr. Justice A.S. Anand and Hon'ble Justice Venkataswamy, held that the Law of Limitation may harshly affect a particular party, but it has to be applied with all its rigour when the Statute so prescribe and Courts have no power to extend the period of limitation on equitable ground.

14. Under the concept of welfare State, in order to promote social justice, it is the bounden duty of the State to protect and preserve the public interest and public fund. Since public exchequer is incurring heavy expenses on the different departments of the State and its instrumentalities, it is incumbent upon them to be fast and prompt in discharging their duties and in carrying their responsibilities with due diligence. If there is good case on merit and the application for condonation of delay, unintentional or otherwise, filed by the State is not allowed, it is certain that damage will be caused to the public interest and public fund. Unfortunately, the officers of the State and its instrumentalities carry an impression that with each and every case, the delay caused in filing an appeal is bound to be condoned, taking it for granted on the basis of a few decisions where the delay has been condoned considering the facts of those cases where sufficient causes were shown and proved.

15. The present application for condonation of delay has been filed in a very cryptic and casual manner without explaining the delay as required by the law of Limitation. It is urged by the learned counsel for the appellants that the expression 'sufficient cause' in Section 5 of the Limitation Act must receive a liberal construction in favour of the State so as to advance substantial justice. According to the learned counsel for the petitioners, the decision of the Government is a collective and institutional decision, therefore, they cannot be treated at par with the private individual. According to them, certain amounts of latitude is, therefore, not impermissible in the present appeal which was preferred by the Union of India.

16. The term 'sufficient cause' is not defined under Section 2 of the Limitation Act, but by the same, it means and so far has been construed as beyond control of the party seeking indulgence for extension of the period of limitation. But from a bare

perusal of Section 5 of the Limitation Act and its preamble, it manifests that Limitation Act is an exhaustive Code governing the law of limitation in respect of matters specially dealt with by it. This is why the Law of Limitation is a panacea to prevent disturbance or deprivation of what may have been acquired in equity of justice or what may have been lost by the parties or inaction/negligence of laches. The Courts are not permitted to travel beyond the provisions of the Act or to supplement them. The Court cannot grant exemption from limitation on equitable consideration or on the ground of hardship.

17. Section 5 of the Act gives the Court a discretion which in respect of jurisdiction, is to be exercised in the way in which judicial power and discretion should be exercised and upon principles which are well understood.

18. It is correct that no hard and fast line can be drawn as to what afford 'sufficient cause' in a given case, where sufficient cause shown or not, depend upon the fact of the case. In the instant case, 'sufficient cause' is missing.

19. I have given my thoughtful considerations to the submissions of the learned counsel of both sides. On careful consideration of the statements made in the condonation petition, the strenuous arguments of both sides and on the basis of the authorities of the Apex Court, we are unable to place any credence to the explanations put forward by the petitioners. Therefore, we unhesitatingly hold that the delay has not been satisfactorily accounted for. Whatever liberal interpretation we may try to put on the word 'sufficient cause' on account for to have liberal explanation in view of the provisions of Section 5 of the Limitation Act for exercise of discretion, it will be impossible for me having regard to the facts of this case to hold that there is any 'sufficient cause' shown by the petitioners. As such. I am inclined to hold the present explanation as being incapable of furnishing a judicially accepted ground for condonation of delay.

This application is accordingly dismissed. I make no order as to costs.

N.C. JAIN, CJ (ACTG.) (AGREEING)

I have gone through the illustrious and painstaking judgment prepared by my learned brother, A.H. Saikia, J., and while agreeing with him, hasten to add that if at all there is a fit case for declining the application for condonation of delay, this is one of the few cases in which this Court would hesitate to condone the delay of 118 days.

Averting to the averments made in paragraph 2 of the application which has been commented upon by my brother, A.K. Saikia, J., it deserves to be noticed that up till 5.5.2000, when the certified copy of the judgment was available to the appellant No. 2, limitation had not expired. Had appellant No. 2 gone through the judgment with a little expedition, he would not have taken one month and twenty-two days to give instructions to the Asstt. Commissioner of Central Excise to prefer the appeal. Interestingly, the affidavit in support of the averments made in paragraph 2, has been filed by one Superintendent, Head Quarters Law Cell, Central Excise, Guwahati, and not either by the Commissioner or the Asstt. Commissioner. The contents of paragraph 2 that the appellant No. 2 gave approval for filing the appeal after consulting higher authorities (the designation of which authorities have not been disclosed in the paragraph) could be supported by a statement on oath only by appellant No. 2 and not by the Office Superintendent. Leaving that aside, it is not understandable as to how and in what manner seven weeks were taken by the appellant No. 2 to take a decision regarding the filing of the appeal. Even after the decision was taken, a week was again wasted in sending the communication to the Asstt. Commissioner of Central Excise for filing the appeal which communication was received by the Guwahati Office only on the 7th of July, 2000. The explanation of appellant No. 2 that the engaged counsel was not available between 7th of July, 2000 and 27th of July, 2000, even if taken to be on its face value, he should have known that Mr. K.N. Choudhury is a Senior Advocate and he was not needed for preparing the appeal. A Senior Advocate is engaged for arguing out the case and not for preparing the appeal. The appeal could very well be filed by either the previous counsel or some other Advocate and then Mr. K.N. Choudhury could be briefed for arguing out the matter. Even if we were to ignore the period between 7th of July, 2000 upto 27th of July, 2000 as the present counsel was not available, there is no explanation forthcoming on the records of the case as to how more than a month was wasted in furnishing to the engaged

counsel further documents/information. The lame excuse of the appellant No. 2 regarding his ailment is neither supported by any medical certificate nor by any affidavit of his own. It is not stated in the affidavit that the appellant No. 2 was not attending the office during that period of one month. It is further not stated in paragraph 2 as to why further documents or information could not be made available by the Asstt. Commissioner or by any other officer. If the appellant No. 2 was not in a position to make the information available, he could direct some other officer to do the needful.

We do not want to go into the question as to what further documents or information was necessary for preparing the memorandum of appeal. It is a matter of common knowledge that a Writ Appeal is filed on the basis of the pleadings in the writ petition, in the written statement, rejoinder and the documents attached by the parties to the writ petition. In view thereof, it could not successfully be explained that the delay from 2.5.2000 to 25.8.2000, can be attributed to be a valid explanation on account of departmental reasons. The matter has been dealt with by the officers in a most casual manner presuming that whatever be the delay, the same would be condoned for the mere asking.

It is in the aforementioned factual position that the ratio of law laid down by the Hon'ble Supreme Court in P.K. Ramachandran v. State of Kerala and others, reported in AIR 1998 SC 2276, comes into play. It has been held in P.K. Ramachandran (supra) that the law of limitation has to be applied with all its rigours prescribed by the Statute and that Courts have no power to extend the period of limitation on equitable grounds. The Apex Court in P.K. Ramachandran (supra) was dealing with a situation where the explanation was offered by the State that at the relevant time, the Advocate General's office was fed-up with many arbitration matters pending consideration. The delay was condoned by the High Court of Kerala. The Apex Court while reversing the judgment of the Kerala High Court, held that such an explanation would hardly be reasonable, satisfactory or even proper explanation. The aforesaid case, in my considered view, is squarely applicable to the fact of the instant case and, therefore, while agreeing with my brother, Mr. A.H. Saikia. J., I also order dismissal of the application for condonation of delay.

The Misc. case is thus dismissed.

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