

Syncom Formulations Vs Sas Pharmaceuticals

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Court : Delhi

Decided On : Jul-21-2010

Judge : Mr. G. S. Sistani, J.

Acts : Limitation Act, - section 5

Appeal No. : RFA 190/2009

Appellant : Syncom Formulations

Respondent : Sas Pharmaceuticals

Advocate for Def. : Mr. Rajeev Kumar, Adv.

Advocate for Pet/Ap. : Mr. Sachin Gupta ; Mr. Shashi P. Ojha, Advs.

Judgement :

1. Whether reporters of local papers may be allowed to see the Judgment Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

ORDER

1. This is an application filed by the appellant under Section 5 of the Limitation Act seeking condonation of delay of 806 days in filing the present appeal.

2. Learned counsel for the appellant submits that the judgment and decree was passed on 24.11.2006, however, the decree was drawn up only on 25.5.2007. Counsel further submits that delay in filing the appeal was caused on account of the fact that after passing of the judgment and decree the appellant sought advice from various counsels in Indore and Delhi about the merit and the grounds of the appeal. The appellant thereafter approached the present counsel for preparing appeal in the month of March, 2007.

3. It is further contended by counsel for the appellant that the case of the appellant was being handled by the present law firm, which has senior associate lawyers, who interact and receive instructions independently from the clients and one such counsel was interacting with the present appellant. The said counsel had prepared the first draft of the appeal in the month of April, 2004, which was sent to the appellant for their approval. The associate lawyer, who was handling the matter, in his email dated 31.7.2007 had written to the appellant that the appeal is being filed and, thus, the appellant was under the impression that appeal had been filed, admitted and the same would come up for hearing in its normal course.

4. Learned counsel for the appellant submits that the counsel who had drafted the appeal left the services of the law firm, without giving status report and without handing over the matters, which were being handled by him and, thus, the filing of appeal escaped the attention and was not filed within the period of limitation. Counsel further submits that in April, 2009, when the appellant received execution papers, the appellant contacted the law firm to find out the present status of the appeal and it was learnt that the appeal had never been filed. Counsel also submits that non-filing of the appeal within the period of limitation was on account of inadvertence and it was neither intentional nor deliberate and in case delay is not condoned, it would result in a meritorious matter being thrown out at the very threshold and cause of justice would be defeated.

5. Learned counsel for the appellant relies upon Ram Nath Sao vs. Gobardhan Sao, reported at (2002) 3 SCC 195, in support of the aforesaid plea which has been raised. Counsel for the appellant submits that in the case of Ram Nath Sao (supra), the Apex Court while considering various judgments of the Supreme Court

had condoned the delay in a partition suit, which has been decreed by the trial court and thereafter four appellants had died during the pendency of the first appeal before the High Court. The court had taken into consideration that the appellants were rustic villagers and illiterate.

6. Learned counsel for the appellant submits that a liberal view should be taken in this matter and delay should be condoned.

7. The present application has been vehemently opposed by counsel for the respondent on the ground that the present application is extremely casual in nature, devoid of material particulars and the appellant has suppressed the fact that the appellant company had knowledge of the judgment as an application under Order 39 Rule 2(A) CPC was filed during the course of the suit and the same was pending even after passing of the judgment. Counsel further submits that show cause notices were issued to the Director of the appellant company on 24.11.2006 and 12.12.2006. The appellant was well aware of the passing of the judgment and decree. Counsel also submits that perusal of the appeal itself would show that the appeal was prepared on 4.4.2009 when the affidavit was duly attested, however, the appeal was filed after 51 days on 26.5.2009. Counsel for the appellant has, however, submitted that although the appeal was ready but the same could not have been filed as they were awaiting the cartons which were not available.

8. It is contended by counsel for the respondent that in the application it is nowhere stated that as to when the counsel had left the services of the law firm and even otherwise the story is concocted and not reliable. It is further contended that the appellant has failed to show sufficient cause for condoning the delay.

9. Learned counsel for the respondent has placed reliance in the case of Love Kumar Sethi v. M/s Deluxe Stores & Ors., reported at 145 (2007) DLT 275 (DB), wherein the delay of 146 days were not condoned as the appellant had failed to provide the necessary documents in support of the grounds for delay. The Division Bench has held that the appellant has not satisfied the Court regarding there being sufficient cause as the facts must inspire confidence. Counsel further relies in the case of Ramey vs. M.C.D., reported at 134 (2006) DLT 106 (DB), wherein delay

was not condoned and it was held as under:

4. Learned Counsel for the appellant has drawn our attention to two judgments of the Supreme Court, namely, Collector, Land Acquisition, Anantnag and Anr. v. Mst. Kastiji and Ors., reported as AIR 1987 SC 1353 and Balakrishnan v. M. Krishnamoorthy reported as VII (1998) SLT 334 = IV (1998) CLT 63 (SC) = 1998 (7) SCC 123 wherein it has been held that the court should adopt a liberal approach while disposing of applications for condensation of delay and that the word "sufficient cause" under Section 5 of the Act should receive a liberal construction so as to advance the cause of substantial justice.

5. We have perused the aforementioned judgments. There is no doubt that it is settled law that as against a technical and pedantic approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits.

6. At the same time, we would also like to refer to a judgment of the Supreme Court in the case of Salil Dutta v. T.M. and M.C. Private Ltd. reported as JT 1993 (4) SC 528, wherein, while distinguishing the decision in Rafiq and Anr. v. Munshilal and Anr. reported as AIR 1981 SC 1400, it was observed as below: The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex- parte decree notwithstanding the negligence and/or misde meanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

7. In the light of the above and in the facts and circumstances of the present case, we are not persuaded to exercise our power of condensation of delay in favor of the appellant. We are not inclined to condone the delay of 1203 days in filing the

present appeal as the appellant has failed to furnish any satisfactory Explanation in his application warranting condensation of delay. On the contrary, his application does not inspire any confidence. Admittedly, no complaint has been filed against the Advocate who was allegedly not diligent in pursuing the litigation on behalf of the appellant. Putting the entire blame upon the Advocate and trying to portray as if the appellant was illiterate and poor and hence totally unaware of the nature and significance of the pending proceedings, is quite unacceptable, particularly in view of the fact that the appellant has entered into a contract worth Rs. 20 lacs with the MCD and is, therefore, not only business savvy and worldly wise, but quite capable of taking care of his commercial interests. He is not a rustic ignorant villager hailing from the backwaters who has no knowledge of the legal proceedings and the court procedures.

10. I have heard counsel for the parties, who have taken me through the application and reply thereto. The basic facts are not in dispute that the judgment and decree was passed on 24.11.2006. Present appeal has been filed on 26.5.2009 after a delay of 806 days.

11. In the case of P.K. Ramachandran v. State of Kerala & Anr. (1997) 7 SCC 556, the Supreme Court has held that an essential pre-requisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.

12. Reading of the application for condonation of delay would show that after passing of the judgment and decree the appellant, which is a limited company, had sought the advice from various counsels in Indore as well as Delhi from 24.11.2006 uptill March, 2007. Thereafter the present counsel was engaged to file an appeal. It has been strongly urged before this Court that the appellant was misled by the email dated 31.7.2007 sent by the associate lawyer wherein it was stated that appeal is being filed. It has been submitted that the email created an impression in the mind of the appellant that no further action was to be taken by them. I find no force in this submission of counsel for the appellant in view of the fact that the appellant is a limited company having the benefit of a trained legal department. It is not understandable, how the appeal would have been filed

without the court fee, signatures and affidavit of the appellant. There is no plausible or reasonable explanation as to why the appellant was not vigilant and why the appellant did not pursue the matter with his counsel from July, 2007, till April, 2009. As per the application after the impugned judgment and decree was passed on 24.11.2006 the appellant spent time in seeking advice from various counsels in Indore and Delhi about the merit and the grounds of the appeal and it is only in the month of March, 2007 that the appellant approached the counsel for preparing the appeal. The period of limitation expired in February, 2007, thus as per the own showing of the appellant they approached their counsel after the expiry of period of limitation. The reading of the application would show the callous and negligent attitude of the appellant, which would disentitle the appellant from seeking discretionary relief of condonation of delay.

13. The judgment sought to be relied upon by counsel for the appellant are not applicable to the facts of this case, as the case of Ram Nath Sao (supra) was decided taking into consideration that the appellants were rustic villagers and illiterate while in this case the position is entirely different.

14. While dealing with an application for condonation of delay under Section 5 of the Limitation Act, the Court must bear in mind two important considerations. Firstly, the expiration of limitation for filing an appeal gives rise to a legal right to a decree-holder to treat the decree as binding between the parties and this right should not be lightly disturbed. Second, if sufficient cause is shown for condonation of delay, the delay should be condoned. It has been repeatedly held by the Supreme Court of India that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice. In the same breath, it has been held that the discretion should be exercised. When there is no negligence or inaction nor want of bona fides imputable to the appellant the Court must be satisfied that there was due diligence on the part of the appellant.

15. The facts of this case are to be considered on the touchstone of the broad principles which have been laid down by the Supreme Court of India while considering the present application for condonation of delay. The conduct of the appellant in the present case shows total callousness and negligence. The

appellant, which is a company, has been absolutely negligent in pursuing its matter. The application itself would show that almost four months' time was taken to seek advice. Further I find the explanation unsatisfactory that the files were misplaced from January to December, 2008. Even after the files were traced in the month of January, the affidavit and the appeal were signed on 4.5.2009 while the same was filed on 26.5.2009 after 51 days. Even, at this stage, the appellant did not seem to be in any hurry to file the appeal. The explanation rendered that the appeal could not be filed as the cartons were not available is also without any merit and does not inspire confidence. In these circumstances the Court is unable to satisfy itself that delay was caused due to sufficient reasons. Accordingly the application is dismissed.

16. In view of the fact that delay has not been condoned, appeal and CM No.8147/2009 stand dismissed.

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