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Fincap Portfolio Ltd. Vs. State and ors

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Court : Delhi

Decided On : Feb-01-2013

Judge : G.P. Mittal

Appellant : Fincap Portfolio Ltd.

Respondent : State and ors

Advocate for Pet/Ap. : Mr. K.K. Manan, Mr. Nipun Bhardwaj, Ms. Rajdipa Behura, Mr. Vijay Aggarwal, Mr. Gurpreet Singh

Judgement :
19, 20, 21, 22, 23, 24 & 25 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

1. t February, 2013 + CRL.L.P. 484/2011 FINCAP PORTFOLIO LTD. Through: ..... Petitioner Mr. K.K. Manan with Mr. Nipun Bhardwaj, Advocates versus STATE & ORS ..... Respondents Through: + Ms. Rajdipa Behura, APP for the State/Respondent No.1. Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates for the Respondents No.2 to 4. CRL.L.P. 485/2011 FINCAP PORTFOLIO LTD. Through: ..... Petitioner Mr. K.K. Manan with Mr. Nipun Bhardwaj, Advocates versus STATE & ORS ..... Respondents Through: + Ms. Rajdipa Behura, APP for the State/Respondent No.1. Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates for the Respondents No.2 to 4. CRL.L.P. 486/2011 FINCAP PORTFOLIO LTD. Through: ..... Petitioner Mr. K.K. Manan with Mr. Nipun Bhardwaj, Advocates versus STATE & ORS ..... Respondents Through: + Ms.

Rajdipa Behura, APP for the State/Respondent No.1. Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates for the Respondents No.2 to 4. CRL.L.P. 487/2011 FINCAP PORTFOLIO LTD. Through: ..... Petitioner Mr. K.K. Manan with Mr. Nipun Bhardwaj, Advocates versus STATE & ORS ..... Respondents Through: + Ms. Rajdipa Behura, APP for the State/Respondent No.1. Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates for the Respondents No.2 to 4. CRL.L.P. 488/2011 FINCAP PORTFOLIO LTD. Through: ..... Petitioner Mr. K.K. Manan with Mr. Nipun Bhardwaj, Advocates versus STATE & ORS Crl.L.P. Nos.484/2011, 485/2011,486/2011, 487/2011, 488/2011, 489/2011 & 490/2011 Through: + Ms. Rajdipa Behura, APP for the State/Respondent No.1. Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates for the Respondents No.2 to 4. CRL.L.P. 489/2011 FINCAP PORTFOLIO LTD. Through: ..... Petitioner Mr. K.K. Manan with Mr. Nipun Bhardwaj, Advocates versus STATE & ORS ..... Respondents Through: + Ms. Rajdipa Behura, APP for the State/Respondent No.1. Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates for the Respondents No.2 to 4. CRL.L.P. 490/2011 FINCAP PORTFOLIO LTD. Through: ..... Petitioner Mr. K.K. Manan with Mr. Nipun Bhardwaj, Advocates versus STATE & ORS Through: ..... Respondents Ms. Rajdipa Behura, APP for the State/Respondent No.1. Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates for the Respondents No.2 to 4. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. These seven Leave Petitions (Crl.L.Ps. 484/2011, 485/2011, 486/2011, 487/2011, 488/2011, 489/2011 & 490/2011) arise out of a similar order passed in seven Complaint Cases under Section 138 of the Negotiable Instruments Act, 1881 (the Act) whereby the seven complaints were dismissed on account of the non-appearance on behalf of the Complainant and the accused, that is, Respondents No.2 to 4 were acquitted.

2. The order dated 14.07.2010 passed by the learned Metropolitan Magistrate, Patiala House, New Delhi is extracted hereunder:14.07.10. At 2 p.m. Pr. None for Complaint Counsel for accused Case today is listed for disposal of the Application of Complainant for furnishing additional affidavit. There is no appearance on behalf of Complainant since morning despite repeated calls. Even on 12.11.09 there was no appearance on behalf of Complainant. Case is dismissed in default as well as

for nonprosecution. Accused is acquitted. File be consigned to Record Room.

3. Along with the Leave Petitions, an Application under Section 5 of the Limitation Act, 1963 has been moved for condonation of delay of 404 days in filing these Leave Petitions. The grounds set up in the Applications are that the junior counsel appearing for the main counsel did not inform him (the main counsel) about the dismissal of the Complaint for non-appearance. Thus, the delay in filing the Appeal (Leave Petitions) is not intentional but on account of the reasons beyond the powers of the Petitioner.

4. The Application is opposed by Respondents No.2 to 4 by way of filing a written reply. It is stated that in fact there is a delay of 461 days in filing the Appeal (Leave Petition). The Respondents have acquired indefeasible right. It is stated that certified copy of the order was obtained on 25.03.2011 and even thereafter the Leave Petition was filed only on 21.10.2011, that is, after a gap of another 209 days. Even if, the case was dismissed in default on account of the wrong noting of the date, or, even if, the junior counsel could not inform the main counsel of the dismissal in default of the Complaint Case. The Petitioner has not given any explanation for this delay of 209 days.

5. Mr.K.K.Manan, learned counsel for the Petitioner urges that the Courts normally do not throw away meritorious lis on hypertechnical grounds. The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury.

6. Learned counsel contents that a criminal offence is considered as a wrong against the State and also the society and, therefore, the Court should be very liberal in condoning the delay in launching prosecution or, even if, in filing the Appeal. Learned counsel places reliance on a three Judges Bench decision of the Supreme Court in Udai Shankar Awasthi v. State of U.P. & Anr., decided on

09.01.2013. Paras 6 to 9 of the Report of the Supreme Court are extracted hereunder:6. Section 468 Cr.P.C. places an embargo upon Court from taking cognizance of an offence after the expiry of the limitation period provided therein. Section 469 prescribes when the period of limitation begins. Section 473 enables the Court to condone the delay, provided that the Court is satisfied with the explanation furnished by the prosecution/ complainant, and where, in the interest of justice, extension of the period of limitation is called for. The principle of condonation of delay is based on the general rule of the criminal justice system which states that a crime never dies, as has been explained by way of the legal maxim, nullum tempus aut locus occurrit regi (lapse of time is no bar to the Crown for the purpose of it initiating proceedings against offenders). A criminal offence is considered as a wrong against the State and also the society as a whole, even though the same has been committed against an individual.

7. The question of delay in launching a criminal prosecution may be a circumstances to be taken into consideration while arriving at a final decision, however, the same may not itself be a ground for dismissing the complaint at the threshold. Moreover, the issue of limitation must be examined in light of the gravity of the charge in question. (Vide: Japani Sahoo v. Chandra Sekhar Mohanty, AIR 200.SC 2762.Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368.and Noida Entrepreneurs Association v. Noida & Ors., AIR 201.SC 2112).

8. The Court, while condoning delay has to record the reasons for its satisfaction, and the same must be manifest in the order of the Court itself. The Court is further required to state in its conclusion, while condoning such delay, that such condonation is required in the interest of justice. (Vide: State of Maharashtra v. Sharad Chandra Vinayak Dongre & Ors., AIR 199.SC 231.and State of H.P. v. Tara Dutt & Anr., AIR 200.SC 297).

9. To sum up, the law of limitation prescribed under the Cr.P.C., must be observed, but in certain exceptional circumstances, taking into consideration the gravity of the charge, the Court may condone delay, recording reasons for the same, in the event that it is found necessary to condone such delay in the interest of justice.

7. Per contra, the learned counsel for Respondents No.2 to 4 argues that party seeking condonation of delay must show sufficient cause and give proper explanation for delay in filing an Appeal or a Petition, if the delay is not properly explained, the Court will not come to the rescue of the litigant who is negligent and causes harassment to the opposite party. The learned counsel states that on expiry of period of limitation prescribed for seeking legal remedy certain rights accrue in favour of the opposite party which cannot be taken away without their being sufficient cause for condonation of delay. The learned counsel for Respondents No.2 to 4 places reliance on Sudhir Kumar Anand v. Dr.Vijay Kr.Anand & Ors., 189 (2012) DLT 77.and Hameed Joharan & Ors. v. Abdul Salam, AIR 200.SC 3404.

8. Section 256 of the Code of Criminal Procedure, 1973 (the Code) empowers a Magistrate to stop proceedings or dismiss a complaint for non-appearance of the Complainant and pronounce a judgment of acquittal where evidence of principle witnesses has been recorded. Section 256 of the Code is extracted hereunder:256. Non-appearance or death of complainant:- (1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. (2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

9. In Associated Cement Company Limited v. Keshvanand (1998) 1 SCC 68.the Supreme Court observed that the provisions of Section 247 of the Code of Criminal Procedure, 1898 (Section 256 in the New Code) have been incorporated to provide some deterrence against dilatory tactics on the part of a Complainant who sets the law in motion through his complaint. An accused who per force has

to attend the Court on all posting days can be put to much harassment by the Complainant by his absence.

10. The order dated 14.07.2010 reveals that there was no appearance on behalf of the Petitioner for the whole day. Learned Magistrate noted that even on 12.11.2009 none had appeared on behalf of the Complainant. The object of incorporation of Section 256 of the Code as stated earlier is that the Complainant after filing a complaint must not take process of the Court lightly and must not cause unnecessary harassment to a person who has been summoned to face trial as an accused. I will not dwell much on merits since at the moment I am only looking into the aspect whether there is sufficient cause for condonation of delay in filing the Leave Petition. It is true as held in Udai Shankar Awasthi (supra) that a criminal offence is a wrong against the State but at the same time the Supreme Court observed that the Court while condoning the delay has to record the reasons for its satisfaction. The instant case relates to dishonour of the cheque which was made a criminal offence by incorporation of Section 138 in the Act w.e.f. 01.04.1989. Although, the conviction under Section 138 of the Act entails substantive imprisonment which may extent to one year or with fine or with both, yet the nature of the offence is such that it can be mentioned as quasi criminal proceedings. The dishonour of the cheque is not an offence against the society but an offence against an individual. Therefore, it is all the more necessary that adequate explanation must be given. It is true that the expression sufficient cause should be given a liberal interpretation so as to advance substantial justice between the parties. [Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685]. It is not the length of delay which is material for condonation of delay in filing an Appeal but the acceptability of the explanation. There may be cases where a few months delay may not be condoned as an Applicant has no reasonable explanation to offer for the same, yet there are cases where the delay of several years has been condoned. [State of Nagaland v. Lipok Ao & Ors., (2005) 3 SCC 752]. The law that each day must be explained has mellowed down yet it has to be shown by the Applicant that there was neither any gross negligence, nor any inaction, nor want of bona fides.

11. Turning to the facts of the instant case, the Petitioners plea is that there was wrong noting of the date as it was noted as 15.07.2010 instead of 14.07.2010. Even if, there was wrong noting of the date by the learned counsel, there is not even a whisper as to why the Complainant himself could not appear before the Court on 15.07.2010. Furthermore, the fact that this Leave Petition along with an Application for condonation of delay was filed in this Court only on 21.10.2011, that is, after about one year and four months of the alleged date of hearing, that is, 15.07.2010 which shows that the Complainant was totally unconcerned about the date of hearing or for his appearance on the date of hearing. Thus, even if, the Complainant also noted the date wrongly as 15.07.2010 instead of 14.07.2010 he would have asked his counsel to take immediate steps for setting aside of the order dated 14.07.2010. There is not even a whisper as to when the Complainant contacted the counsel. This is very material in view of the fact that the Complainant was expected to appear in the case on each and every date of hearing.

12. Further, as urged by the learned counsel for Respondents No.2 to 4 although certified copy of the order was prepared on 25.03.2011, yet this Leave Petition for setting aside of the order of dismissal in default of the complaint was instituted only on 21.10.2011. A plea is taken that there was delay on account of not passing the information of dismissal in default by the junior counsel to the main counsel. No explanation whatsoever has been given as to why steps were not taken by the main counsel even when certified copy was available on 25.03.2011.

13. A Co-ordinate Bench of this Court in National Small Industries Corporation Ltd. v. M/s Akriti Industries & Ors., 2012 (3) JCC (NI) 217, in the absence of sufficient cause declined to condone a delay of 28 days in filing leave to Appeal against dismissal of a complaint under Section 138 of the Act.

14. The Petitioner has failed to show sufficient cause for condonation of delay. Rather, it is apparent that there was gross negligence on the part of the Petitioner in perusing the complaint and filing leave to appeal.

15. In the circumstances, the delay of more than 400 days in filing leave to Appeal cannot be condoned. Leave Petitions are accordingly dismissed.

16. Pending Applications stand disposed of. (G.P. MITTAL) JUDGE FEBRUARY 01 2013 v

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