

Party Name : KISHAN CHOUDHURI Vs SMT. OINDRILLA RAJARAW GHOSH & ANR

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned counsel, Mr. Santanu Bhattacharji for the petitioner and learned counsel, Mr. B. Bannerji for the respondents. This is an application under Section 5 of the Limitation Act seeking condonation of delay of 68 days in filing connected CRP. No.60 of 2015 challenging judgment and order dated 26.02.2015 passed by the Family Court, Gomati District, Udaipur in Case No.Cr. Misc./FC/UDP/46/2014.

Brief fact is that the respondents being the wife and minor son of the petitioner herein approached the Family Court at Udaipur for granting them maintenance of Rs.25,000/- per month against the petitioner herein.

The petitioner being the respondent contested the case and the Family Court by impugned judgment dated 26.02.2015 granted maintenance @ of Rs.8,000/- per month to the respondent No.1 i.e. the wife, Oindrilla Rajaraw Ghosh and Rs.12,000/-per month to the respondent No.2 i.e. the minor son, Sukalpan Choudhury.

Felt aggrieved the petitioner filed the connected CRP No.60 of 2015 under Section 19 of the Family Courts Act, challenging the judgment dated 26.02.2015.

It is contended by the petitioner that there was a delay of 68 days in preferring the Revisional Application and the petitioner prayed for condoning the delay and further prayed for accepting the Revisional Application for hearing on merit.

The respondents filed written objection against the prayer of condonation of delay. The reason for the delay has been explained in para 4 and 5 of the petition, which reads as follows:-

*"4. That, the Revision Petitioner by profession is an Asst. Professor in NIT, Agartala and he is also a Research Scholar for obtaining Ph.D Degree. Since last more than 2 years he has been working hard in his Research Work for obtaining the Ph.D degree at present his work has come to its final stage. So as a part of his Research work he had to attend an educational Conference held at Kanyakumari in South India w.e.f 24/3/2015 to 30/03/2015. Thereafter he came back Agartala on 01/04/2015.*

*5. That, as the Revision Petitioner was seriously engaged at the final stage of this Research work so he could not able to contact with his lawyer for preparation Revision against the impugned judgment passed on 26/02/2015. Hence there has been some delays for 68 days in preferring the instant Revision before this Hon@@@@@ble Court."*

Mr. Bhattacharji, learned counsel for the petitioner candidly submits that the petitioner has been working as the Assistant Professor of NIT, Agartala and is a very responsible as well as reputed person and for the sake of his career while he was busy in doing the works of his Ph.D, he could not contact his conducting advocate to file the appeal in time and the delay, therefore, may be condoned. He has further submitted that the Revisional Application has got merit for consideration since the Family Court has granted maintenance though the wife-respondent has sufficient income to maintain herself.

According to learned counsel Mr. Bhattacharji, the Family Court committed wrong in allowing Rs.8,000/- as maintenance to the respondent-wife since the respondent-wife has a monthly income of Rs.11,000/-. The Revisional Application, therefore, merits consideration and if the delay is not condoned on technical ground the petitioner will be deprived of justice.

On the other hand, learned counsel, Mr. Banerji has submitted that the delay has not been explained at all. He has also submitted that as per the statement made in Para-4 the petitioner was at Kanyakumari from 24.03.2015 to 30.03.2015, but the Revisional Application was not filed within the month of March or April. It was filed on 08.06.2015 and that delay has not been explained at all and, therefore, the condonation petition may not be considered. He has further submitted that the Trial Court passed a reasoned order taking into account the income of the petitioner as well as the respondent-wife and the judgment on merit also does not deserve interference at all.

The impugned judgment granting maintenance was passed by the Family Court on 26.02.2015. As per the provisions prescribed in Section 19 of the Family Courts Act, the petitioner was supposed to challenge the order within 30 days from the date of passing the order. So, 30 days elapsed on 28.03.2015. Even if it is presumed that the petitioner was away during the period from 24.03.2015 to 30.03.2015 and he returned on 01.04.2015, he would have filed the Revisional Application immediately thereafter, but the present application was filed on 08.06.2015. The expression "sufficient cause" as contained in Section 5 of the Limitation Act shall generally receive a liberal construction. But it does not mean that whatever explanation has been given should be taken into consideration and the delay should be condoned.

There is no need of explaining the day to day or hour to hour delay. The period of delay is immaterial. What is important is the cause or reason for the delay. Whether such delay was unavoidable and compelling or whether it was deliberate inaction on the part of the petitioner.

Learned counsel, Mr. Bhattacharji put emphasis that to advance substantial justice delay may be condoned. It has now been settled that the expression "sufficient cause" shall receive a liberal construction so as to advance substantive justice when no negligence or inaction or want of bona fide is imputable to the petitioner. There is no straight-jacket formula to consider the reasons but it should be depending on the particular fact of the given case. The petitioner has given no explanation at all for the entire period except the period from 24.03.2015 to 30.03.2015.

In support of that period also no document had been adduced to justify it. I find no merit at all to consider the petition under Section 5 of the Limitation Act since, in my view, the delay is deliberate inaction and negligence on the part of the petitioner and hence, the petition seeking condonation of delay stands dismissed.