

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CDLOW no. 08/2014
In LPAOW No. 19/2014

Date of Judgment: 13.02.2015

Union of India and anr
v.
M/S Godrej Agrovet Limited.

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing counsel:

For the Applicants-Appellant(s) :	Mr. V. K. Magoo, Sr. CGSC.
For the Respondent(s) :	Mr.Subash Dutt, Advocate and Mr. Suraj S. Wazir, Advocate.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar, CJ

1. This application is filed by Union of India as well as the Commissioner, Customs & Central Excise, seeking to condone the delay of 928 days in filing the Letters Patent Appeal against the order dated 04.05.2012 made in OWP.No.1209/2009. The said writ petition was disposed of by the learned Single Judge by following an earlier order made in OWP No.470/2008 which was decided on 23.12.2010 and the writ petition was disposed of in terms of the said earlier judgment dated 23.12.2010.

2. The contention of the applicants is that the issue involved in the appeal is common in nature and 107 Letters Patent Appeals, which were filed by the applicants-appellants on the same issue in respect of other parties, are pending before this

Court as on today and the interim orders were also passed on 13.12.2012 in tune with the interim order passed by Hon'ble the Supreme Court in SLP (Civil) No.28194-28201/2010 dated 13.01.2012. It is also stated in the affidavit and petition filed by the Commissioner, Customs & Central Excise dated 07.02.2014 that the applicants have engaged the services of a reputed counsel for defending, pursuing and appearing in the matter and they were under a *bona fide* impression that the learned counsel was pursuing the matter. Learned counsel orally informed the applicants that the writ petition was not decided and only after receiving caveat from the respondent on 26.08.2011, the disposal of the writ petition came to the knowledge of the applicants. The applicants requested the counsel on 29.08.2011 for taking necessary action, but even thereafter the learned counsel failed to inform the action taken, hence the applicants sought the services of other counsel and applied for certified copy on 19.12.2013, which was issued on 16.01.2014. Thereafter the applicants took steps for preparing the appeal and sent it for vetting and filing before this Court. It is specifically reiterated that because of the mistake or negligence of the counsel or his chamber-clerk, there occurred delay of 928 days and unless the delay is condoned, the applicants will suffer an irreparable loss of revenue, which can never be compensated in future.

3. The application was opposed by the respondent by contending that this Court admitted the connected appeals on 07.04.2011 based on the interim order passed by Hon'ble the Supreme Court, wherein the respondents were directed to give an undertaking to the effect that if the Revenue succeeds in their appeal, the respondents shall refund the amount with interest. While hearing the main writ petition, namely, OWP No.1209/2009 on 04.05.2011, this fact was not informed before the learned Single Judge and the applicants were not diligently prosecuting the matter and merely blaming the learned counsel cannot be a reason to condone the inordinate delay of 928 days.

4. Learned counsel appearing for the applicants argued that the delay has occurred on account of facts stated in the application and the same is neither willful nor deliberate and the mistake of the counsel cannot be put against the applicants as particularly in revenue matters, the government will lose revenue and, therefore, a pragmatic view may be taken by this Court. It is also argued by the learned counsel that by condoning the delay the respondent will not be put to any prejudice as the learned Single Judge has allowed the writ petition by following an earlier order and the same has not attained finality.

5. Learned counsel appearing for the respondent on the other hand opposed the application and contended that after the date of period of limitation a right has accrued to the respondent and if the delay is condoned, prejudice will be caused to the respondent. He has relied on **AIR 1962 SC 361, Ramlal and ors v. Rewa Coalfields Ltd** and **(2010) 8 SCC 685, Balwant Singh v. Jagdish Singh and ors** in support of his contention and prayed for dismissing the application.

6. We have paid our anxious attention to the pleadings as well as the points raised, argued and the decisions cited.

7. It is not in dispute that the writ petition filed by the respondent was allowed by the learned Single Judge by following an earlier order made in OWP No.470/2008 dated 23.12.2010. No independent order giving factual finding was passed by the learned Single Judge. Once the order, which was followed, has not attained finality and a batch of 107 appeals are already entertained by this Court and are pending as on date, the applicants are justified in filing the appeal against the order of the learned Single Judge and the delay, though is abnormal, is properly explained by stating that the learned counsel engaged, or his office, never informed the fact about the final order passed in the writ petition and after receiving notice on caveat, the applicants immediately approached the counsel for applying for the certified copy which

was also not applied and thereafter through another counsel certified copy was applied and after receiving the same, appeal papers were made ready and the same was filed. The said explanation shows “sufficient cause” to condone the delay. As rightly contended by learned counsel for the applicants, by condoning the delay, the right of the respondent will not be affected as the order in its favour was passed by following an earlier order, which is in appeal as on date.

8. The decisions cited by the learned counsel for the respondent reiterate the position of law that *bona fide* and due diligence have to be shown by a person seeking condonation of delay to seek the remedy before the Court under Section 5 of the Limitation Act 1961 read with Section 5 of the Limitation Act No. IX of 1995 of Jammu and Kashmir and the *bona fide* and due diligence has to be ascertained and determined on the facts and circumstances of the each case. Therefore, the judgments cited, will not in any way help the respondent to support its contention.

9. In the decision reported as (2010) 8 SCC 685 (**Balwant Singh v. Jagdish Singh and ors**), it has been held that liberal construction of the expression “sufficient cause” is intended to advance substantial justice, which itself pre-supposes no negligence or inaction on the part of the applicant to whom want of *bona fide* is imputable. The sufficient cause should be

such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. The department having engaged the counsel of repute is justified in their contention that the mistake committed by the counsel cannot prejudice the party.

10. In **State of Karnataka v. Y. Moideen Kunhi, 2009 (13) SCC 192**, the Supreme Court has condoned the delay of 6500 days in filing the Appeal against the original order, wherein it has been held as follows:

“21. The case at hand is a classic example where the circumstances are the same. More than 4000 acres of land are involved out of which, according to the State, nearly 3500 acres constitute forest land. Ultimately, the Court has to protect the public justice. The same cannot be rendered ineffective by skilful management of delay in the process of making challenge to the order which prima facie does not appear to be legally sustainable.

22. The expression "sufficient cause" as appearing in Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") must receive a liberal construction so as to advance substantial justice as was noted by this Court in *G. Ramegowda v. Special Land Acquisition Officer*, ((1988) 2 SCC 142) Paras 16-17 of the judgment reads as follows: (SCC pp. 148-49)

16. The law of limitation is, no doubt, the same for a private citizen as for Governmental Authorities. Government, like any other litigant, must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on

Governmental function - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. In the opinion of the High Court, the conduct of the Law Officers of the Government placed the Government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its Law Officers. Lindley, M.R., in *National Bank of Wales Ltd., In re.*, observed, though in a different context: (Ch p. 673)

... Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.

23. Keeping in view the importance of questions of law, which are involved, we are inclined to condone the delay subject to payment of exemplary costs which we fix at rupees ten lakhs to be paid within a period of eight weeks to the Respondents. The delay is condoned subject to the payment of the aforesaid amount as costs. After making the payment the receipt thereof shall be filed before this Court along with an Affidavit. Only after the payment is made, the Special Leave Petitions shall be listed for admission. We make it clear that we have not expressed any opinion on the merits of the case.”

15. In *State (NCT of Delhi) v. Ahmed Jaan*, 2008 (14) SCC 582, the Hon'ble Supreme Court held as follows:

“11. In *State of Kerala v. E.K. Kuriyipe*, it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. In *Milavi Devi v. Dina Nath*, it was held that the Appellant had sufficient cause for not filing the Appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

12. In *O.P. Kathpalia v. Lakhmir Singh*, a Bench of Three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector, Land Acquisition v. Katiji*, a Bench of Two Judges considered the question of limitation in an Appeal filed by the State and held that Section 5 was enacted in order to enable the Court to do substantial justice to the parties by disposing of matters on merits. The expression 'sufficient cause' is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of justice - that

being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. This Court reiterated that the expression 'every day's delay must be explained' does not mean that a pedantic approach should be made. The doctrine must be applied in a rational, common sense, pragmatic manner. When substantial justice and technical considerations 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 a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the Appeal.”

11. In **(2010) 14 SCC 419 (Indian Oil Corporation Ltd. V. Subrata Borah Chowlek)**, the Hon’ble Supreme Court held that although exercise of power under Section 5 of the Limitation Act, 1963 depends upon judicial satisfaction and no distinction is to be made between State and citizens, courts should be liberal while condoning delay in case of State which depends upon its officials for its actions.

12. In the decision reported in **(2013) 12 SCC 649 (Esha Bhattacharjee v. Raghunathpura Nafar Academy)** the Hon’ble Supreme Court laid down the following principles, among other principles, to be followed by the Courts while considering the condone delay petitions:

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

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.....

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

13. The Division Bench of Madras High Court in a decision reported in **2011 (3) CTC 337 (The Revenue Divisional Officer, Madurai v. M.S.A.Ibrahim)** condoned the delay of 3081 days in filing the appeal against the decree passed by the subordinate Court, following the decision cited in paragraph 10 above. The said decision was challenged before Hon'ble the Supreme Court in SLP (Civil) no. 12175/2011 and by order dated 09.05.2011 the Special Leave Petition was dismissed.

14. In **Rafiq v. Munshilal, (1981) 2 SCC 788**, Hon'ble the Supreme Court held that once a person engages his counsel, his botheration goes and it is the duty of the counsel to take care of the case. It has been held as follows:-

“3. The disturbing feature of the case is that under our present adversary legal system where the parties generally through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.”

In yet another decision reported in (2008) 13 SCC 395 (Secretary, Department of Horticulture, Chandigarh v. Raghu Raj), the Hon'ble Supreme Court in paragraph 24 held thus,

“24. When a party engages an advocate who is expected to appear at the time of hearing but fails to so appear, normally, a party should not suffer on account of default or non-appearance of the advocate.”

15. Applying the above cited decisions to the facts of this case, we hold, applicants are justified in seeking condonation of delay. Accordingly the application is allowed. The delay in filing the appeal is condoned, however, subject to payment of costs of Rs. 5000/- by the applicants to the respondent on or before 27.02.2015. The acknowledgement of receipt of cost shall be filed before the registry within a period of one week thereafter. It is made clear that if the cost is not paid, as directed above, the application seeking condonation of delay shall stand automatically dismissed without further reference to the Bench.

(Bansi Lal Bhat)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
13.02.2015
Anil Raina, Secy