

A **AMALENDU KUMAR BERA & ORS.**

V.

THE STATE OF WEST BENGAL

(Civil Appeal No. 2677 of 2013)

MARCH 22, 2013

B [SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]

DELAY/LACHES:

C **Decree against State Government - Execution of -**
Objection u/s 47 - Rejected - Delay in filing revision - Held:
In the application for condonation of delay, no sufficient cause
has been shown which may entitle the respondent to get a
favourable order for condonation of delay - Merely because
D *the respondent is the State, delay in filing appeal or revision*
cannot and shall not be mechanically considered; and in
absence of 'sufficient cause' delay shall not be condoned -
Code of Civil Procedure, 1908 - s.47 - Limitation Act, 1963 -
s.5.

E *Delay - 'Sufficient cause' - Consideration of.*

In the execution case filed in 2009 to get the decree dated 7.8.1969 in a suit for declaration of title and permanent injunction, executed against the respondent-State Government, the objection u/s 47 CPC filed by respondent in the year 2010, was rejected by the executing court on 17.8.2010. Another objection u/s 47 CPC filed by the State on 15.9.2011 was also rejected. The respondent-State then filed a civil revision along with an application for condonation of delay before the District Judge challenging the earlier order dated 17.8.2010. The delay in filing the revision was condoned. The High Court declined to interfere.

Allowing the appeal, the Court

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HELD: 1.1 Merely because the respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of 'sufficient cause' delay shall not be condoned. In the instant case, admittedly, the earlier objection filed by the respondent-State u/s 47 CPC was dismissed on 17.8.2010. Instead of challenging the said order the respondent after about one year filed another objection on 15.9.2011 u/s 47 which was also rejected by the executing court. It was only after a writ of attachment was issued by the executing court that the respondent preferred civil revision against the first order dated 17.8.2010 along with a petition for condonation of delay. Curiously enough in the application for condonation of delay no sufficient cause has been shown which may entitle the respondent to get a favourable order for condonation of delay. The expression 'sufficient cause' should be considered with pragmatism in justice oriented approach rather than the technical detection of 'sufficient cause' for the explaining every day's delay. The delay in official business requires its pedantic approach from public justice perspective. [para 9-10] [490-F-G; 491-A-D; 492-B]

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Union of India vs. Nirpen Sharma AIR 2011 SC 1237 - referred to.

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1.2 True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly, when the appellant is the State but in a case where there is serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection u/s 47 till the decree holder puts the decree in execution. The delay in filing the execution case cannot be a ground to condone the delay in filing the

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A revision against the order refusing to entertain objection u/s 47 CPC. This aspect of the matter has not been considered by the High Court while deciding petition for condoning the delay. [para 10] [491-E-F; 492-A-B]

B 1.4 There is no justification in condoning the delay in filing the revision petition. The impugned order passed by the High Court is set aside. Consequently, petition for condonation of delay in filing the revision petition stands rejected. [para 11] [492-C-D]

C Case Law Reference:

AIR 2011 SC 1237 referred to para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2677 of 2013.

D From the Judgment and Order dated 22.03.2012 of the High Court at Calcutta in C.O. No. 602 of 2012.

E Ranjan Mukherjee, S. Bhowmick, Soumen Kr. Dutta, B.P. Yadav, Sarla Chandra for the Appellants.

Joydeep Mazumdar, Avijit Bhattacharjee for the Respondent.

The Judgment of the Court was delivered by

F M.Y. EQBAL, J. 1. Leave granted.

G 2. Aggrieved by the order dated 22nd March, 2012 passed by the Calcutta High Court in C.O. No. 602 of 2012, the petitioner-decree-holder preferred this appeal. The High Court in exercise of power under Article 227 of the Constitution of India had refused to interfere with the order passed by the District Judge, Purba, Medinipur in Civil Revision No.1 of 2011, condoning the delay in filing the Revision Petition.

H 3. Although the Courts have always exercised discretion

in favour of the person seeking condonation of delay in filing the appeal or revision, but in the facts and circumstances of this case, whether the District Judge was justified in condoning the delay occurred in filing the revision petition? A

4. The facts of the case lie in the narrow compass. B

5. The plaintiff- appellant filed a suit in the year 1967 being Title Suit No.483 of 1967 for declaration of title in respect of the suit property and also for a decree for permanent injunction restraining the Respondent-State from interfering with the possession of the suit property. The suit was contested by the Respondent- State of West Bengal by filing written statement. The Trial court passed a contested decree in favour of the appellant in respect of the suit property in terms of judgment and decree dated 7.8.1969. Dissatisfied with the judgment and decree the Respondent - State filed an appeal being Title Appeal No.653 of 1969. The appeal was finally heard and dismissed by the Additional District Judge, 1st Court Midnapore on 13.8.1970. No further appeal or revision was filed by the Respondent-State. The appellant-decree holder then put the decree in execution by levying execution case No.27 of 2009. In the said execution case, the respondent state filed objection under Section 47 of the Code of Civil Procedure, which was converted into miscellaneous case No.18 of 2010. The objection inter-alia was that the execution case is barred by law of limitation and that the suit land is a Khasmahal land of the Government. The petitioner decree holder has no right title and interest in the suit property. It was further stated that the judgment and decree passed in the suit is without jurisdiction and is a nullity. The executing court by reasoned order dated 17.8.2010 dismissed the objection petition. By the said order passed in Miscellaneous Case No.18 of 2010 the Court held that the judgment and decree attained finality and the decree-holder who is pursuing the litigation since 1967 should not be deprived of from the fruit of the decree. The executing court further held that the objection under Section 47, H

A C.P.C. challenging executability the decree is a futile attempt by the State to delay the execution proceedings of the decree holder.

B 6. After the dismissal of the objection filed by the respondent-State, the executing Court proceeded with the Execution Proceedings and steps were taken for issuance of writ of attachment of moveable property of the judgment debtor-state. In the meantime, the respondent State filed another objection on 15.9.2011 under Section 47 CPC for setting aside the decree passed in the suit and also for recall of the writ of attachment. The executing court after hearing the respondent-State rejected the said petition by order dated 15.9.2011. For better appreciation, the order dated 15.9.2011 is reproduced herein-below:-

D "The record is put up for petition filed by the Jdr. Who also files a petition under Section 47 of C.P.C. for setting aside the decree passed by the Court in T.S. 483/1967 along with a petition for recalling the writ of execution.

E Copy served and objected to:

It manifest from the record that decree in T.S. 483/67 was passed on 7.8.1969. Apparently, an appeal was preferred by the defendants/state against such judgment and decree, but the same was also dismissed.

F Eventually, the decree holder files the instant executing case for executing decree so obtained, after taking fresh steps upon the JDR. JDR/State appeared and files a w/o against the instant executing case on 6.4.2010 and the same was registered as J. Miscellaneous No.18/2010 under Section 47 of C.P.C. Upon contested hearing of the J. Miscellaneous case, this Court by way of order No.18 dated 17.8.2010 rejected the J. Miscellaneous case on contest observing inter alia that the said objection under

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Section 47 of C.P.C. is a fulfill attempt by the State of W.B. to delay the executing proceeding of the decree holder. A

Thereafter, the decree holder took steps for executing of the decree passed on 7.8.1969 and then in course of the time. Writ of Attachment of moveable property under order 21 Rule 30 CPC was issued, and the date has been fixed on 20.09.2011 for return of such writ upon execution. B

Now, the JDR/State has filed fresh petition under Section 47 of C.P.C. along with a prayer for recall writ of attachment. However, since the state had already instituted an objection case under Section 47 of C.P.C. and the same has already been disposed of and there present petition under Section 47 of C.P.C. is misconceived and liable to be rejected. Consequently, the petition for recall of writ is also misconceived and liable to be rejected." C D

Hence, it is

Ordered

That the petition under section 47 of C.P.C. dated 15.9.2011 is considered and rejected. E

That the petition dated 15.9.2011 for recall of writ of attachment , issued on 20.08.2011 is consequently rejected. F

To date."

7. After the said objection under Section 47 was rejected on 15.9.2011, the Respondent-State filed a Civil Revision before the District Judge challenging the earlier order dated 17.8.2010, whereby the objection under Section 47 C.P.C. in miscellaneous case No.18 of 2010 was dismissed. Along with the said revision petition, a separate application under Section 5 of the Limitation Act was filed for condonation of delay in filing G H

A the revision petition. The learned District Judge stayed the operation of the order dated 17.8.2010 on the ground that the interest of the State will be adversely affected and the very object of the filing the revision petition will be frustrated. The said stay order was passed on 2.11.2011.

B 8. On 3.2.2011, the Limitation Petition filed by the respondent under Section 5 of the Limitation Act for condoning the delay in filing the Revision Petition was taken up for hearing. Although, the District Judge in its order dated 3.2.2012 noticed that the Courts do not have unlimited and unbridled
C discretionary powers to condone the delay and the discretion has to be exercised within reasonable bounds, known to law. Even then the Court allowed the Limitation Petition and condoned the delay in filing the revision Petition. Aggrieved by the said order the appellant-decree holder moved the Calcutta
D High Court by filing a revision petition being C.O. No.602 of 2012. The High Court by impugned order dated 23.3.2012 dismissed the revision petition on the ground inter-alia that a liberal attitude should be adopted in the matter of condonation of delay when there is no gross negligence or deliberate
E inaction or lack of bona-fide on the part of the State. Hence, this appeal by the appellant-decree holder challenging the aforesaid order passed by the High Court in Revision Petition.

9. We have heard the learned counsel appearing for the
F appellant and the learned counsel appearing for the Respondent-State. There is no dispute that the expression 'sufficient cause' should be considered with pragmatism in justice oriented approach rather than the technical detection of 'sufficient cause' for the explaining every days' delay. However,
G it is equally well settled that the Courts albeit liberally considered the prayer for condonation of delay but in some cases the Court may refuse to condone the delay in as much as the Government is not accepted to keep watch whether the contesting respondent further put the matter in motion. The delay in official
H business requires its pedantic approach from public justice

perspective. In a recent decision in the case of *Union of India vs. Nirpen Sharma* AIR 2011 SC 1237 the matter came up against the order passed by the High Court condoning the delay in filing the appeal by the appellant-Union of India. The High Court refused to condone the delay on the ground that the appellant-Union of India took their own sweet time to reach the conclusion whether the judgment should be appealed or not. The High Court also expressed its anguish and distress, the way the State conduct the cases regularly in filing the appeal after the same became operational and barred by limitation.

10. In the instant case as noticed above, admittedly earlier objection filed by the Respondent-State under Section 47 of the Code was dismissed on 17.8.2010. Instead of challenging the said order the Respondent-State after about one year filed another objection on 15.9.2011 under Section 47 of the Code which was finally rejected by the executing court. It was only after a writ of attachment was issued by the executing court the respondent preferred civil revision against the first order dated 17.8.2010 along with a petition for condonation of delay. Curiously enough in the application for condonation of delay no sufficient cause has been shown which entitle the respondent to get a favourable order for condonation of delay. True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there is serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the decree holder puts the decree in execution. As noticed above, the decree passed in the year 1967 was in respect of declaration of title and permanent injunction restraining the Respondent-State from interfering with the possession of the suit property of the plaintiff-appellant. It is evident that when the State tried to interfere with possession the decree holder had no alternative but to levy the execution case for execution of the decree with regard to interference with possession. In our

- A opinion their delay in filing the execution case cannot be a ground to condone the delay in filing the revision against the order refusing to entertain objection under Section 47 CPC. This aspect of the matter has not been considered by the High Court while deciding petition for condoning the delay. Merely
- B because the Respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of 'sufficient cause' delay shall not be condoned.

11. For the aforesaid reasons we do not find any justification in condoning the delay in filing the revision petition.
- C This appeal is, therefore, allowed and the impugned order passed by the High Court is set aside. Consequently, petition for condonation of delay in filing the revision petition stands rejected.

- D R.P. Appeal allowed.