

IN THE HIGH COURT OF JHARKHAND AT RANCHI

I.A. No. 5437 of 2016
IN
L.P.A. No. 209 of 2016

M/s Central Coalfields Limited through its Project Officer Binesh Sharma son of Laldeo Sharma resident of Kuju Colliery, P.O.- Kuju, P.S.- Mandu, District- Ramgarh Appellant

Versus

Sarlu Mahato son of Latu Mahato, resident of village Dulmi, P.O.- Harhand Kandar, P.S. Mandu, District- Ramgarh.

... .. Respondent

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE ANANDA SEN.

For the Appellant : Mr. D.K. Chakraverty, Advocate
For the Respondent : Mr. Yogendra Prasad, Advocate.

Order No. 07 : Dated 28th November, 2016

I.A. No. 5437 of 2016

Heard Mr. D.K. Chakraverty, learned Counsel appearing for the appellant and Mr. Yogendra Prasad, learned counsel appearing for the respondent on the Interlocutory Application under Section 5 of the Limitation Act, being I.A. No. 5437 of 2016, wherein prayer has been made to condone the delay of 38 days in filing the instant appeal.

Mr. D.K. Chakraverty, learned counsel appearing for the appellant submits that there is a delay of 38 days in preferring the instant LPA. The delay is not intentional and there is no latches on part of the appellant. The order was passed on 27.1.2016 in WP(L) No. 5469/2014. Thereafter, the appellant contacted the office of the lawyer to obtain the certified copy of the said order. Thereafter, the lawyer applied for the certified copy and obtained the same and forwarded the same to the appellant-company. Thereafter the file was scrutinized by the concerned department of the appellant-company and some legal opinion was obtained from their lawyer and ultimately, the appellant-company took a decision to prefer an appeal for which, approval was required to be taken from the Director (Finance) of the Company. Thereafter, the file was sent to the Director (Finance), who

also sought for certain documents and record and ultimately, he was pleased to grant approval for filing the instant appeal and thereafter, appellant-company contacted their panel lawyer and after discussing the matter, got the appeal drafted and the same was presented for filing on 21.4.16. Therefore, the delay of 38 days in filing the instant appeal has occurred, learned counsel for the appellant relies upon a judgment in the case of **Executive Officer, Antiyur Town Panchayat Vs. G. Arumugam (dead) by Legal Representatives** reported in (2015) 3 SCC 569, wherein there was a delay of 1373 days and the same was condoned. In view of the above decision, the learned counsel for the appellant prays to condone the delay of 38 days in filing the present appeal.

Mr. Yogendra Prasad, learned counsel for the respondent vehemently objects the prayer made for condoning the delay of 38 days in preferring the instant appeal by filing a counter affidavit stating therein that this limitation petition is frivolous, misconceived and not maintainable. The appellant-company in order to frustrate the very object of Section 17(b) of the Industrial Disputes Act, 1947 has preferred the present LPA and he further submits that this LPA has been filed against the interim order dated 27.1.2016 in order to harass the workmen and, therefore, deliberate delay has been caused just to deprive the workmen to get the fruit of Section 17(b) of the Industrial Disputes Act. He relies upon the judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Anr. V. Amarnath Yadav** reported in (2014) 2 SCC 422, wherein, it has been held that the delay caused by moving the file from one department to another department is not a sufficient cause to condone the delay. In the aforesaid judgment, the decision rendered in the case of **Postmaster General Vs. Living Media India Ltd.**, reported in (2012) 3 SCC 563, has been relied, wherein, Hon'ble the Supreme Court has deprecated such practices on the part of the Government

authority/Departments in the following words.

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

Learned counsel for the respondent also relies upon the decision in the case of **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai**, reported in (2012) 5 SCC 157, in which at para 18, it has been held as under;

“18. In N. Balakrishnan v. M. Krishnamurthy, the Court went a step further and made the following observations:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

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11. 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

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13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the

explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

counsel for the respondent also relied upon the decision in the case of **B. Madhuri Goud Vs. B. Damodar Reddy** reported in (2012) 12 SCC 693, which followed the judgment of the **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai**, reported in (2012) 5 SCC 157. It has been held in the aforementioned judgment that to condone the delay, discretion should be based not on length of delay but on sufficient and satisfactory explanation.

Counsel for the respondent further relies upon the decision in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others** reported in (2013) 12 SCC 649, wherein, in paragraph 21, 22.1 to 22.4 it has been held as under;

"21. *From the aforesaid authorities the principles that can broadly be culled out are:*

21.1. *(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

21.2. *(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

21.3. *(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4. *(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5. *(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. *(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.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

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

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2. (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3. (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4. (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."*

In the instant case, the ground for condonation of delay is

set forth in paragraph 3 of the petition filed under Section 5 of the Limitation Act, which is quoted here-in-below:-

“That it is stated that the appellant after coming to learn about the judgment/order dated 27.1.2016, contacted their lawyer who advised them to move for appeal. Thereafter, after discussing the matter with officials, the lawyer was advised to obtain the certified copy and thereafter the lawyer applied for certified copy and after obtaining the same, it was forwarded to the appellant-company. Thereafter, the file was scrutinized by the concerned department of the appellant company and some more legal opinion was obtained from their lawyer and ultimately, the appellant-company took a decision to prefer an appeal for which approval was required to be taken from the Director(Finance) of the Company. Accordingly, the file was sent to the Director (Finance) who also sought for certain documents and record and ultimately was pleased to grant approval for filing the instant appeal and, thereafter the appellant-company contacted their panel lawyer and after discussing the matter, got the appeal drafted and the same was presented for filing on 21.4.2016, but in course thereof, a delay of about 38 days has occurred.

The ground is that the appellant being a public sector undertaking, several formalities are required to be followed and therefore, the statement made in paragraph 3 of the Limitation Petition is absolutely vague. There is no document to support that the file was ever moved to place before the Director (Finance) and if at all placed, when it was placed and when the approval was given. At least some evidence should have been brought on record by the Company but in support of the submission made in paragraph 3 and 5 of the petition. No document whatsoever has been brought on record. Moreover, as referred earlier, the case of **State of Uttar Pradesh and Anr. V. Amarnath Yadav** reported in (2014) 2 SCC 422, the Hon'ble Supreme Court held that the delay caused in moving the file from one department to another is not a sufficient cause to condone delay.

In view of the aforesaid judgments cited herein above, this Court comes to a finding that the appellant-company has committed gross negligence in delaying and processing the matter for preferring the instant Letters Patent Appeal before this Court. The

leisurely moving the file from one department to another department after knowing the fact that the workman obtained interim order and, therefore, delay of 38 days has deliberately occurred due to latches on the part of the appellant-company. Therefore, this Court is not inclined to condone the delay of 38 days in preferring the present Letters Patent Appeal.

Accordingly, I.A. No. 5437 of 2016 stands dismissed.

LPA No. 209 of 2016

In view of the order passed in I.A. No. 5437 of 2016, this Letters Patent Appeal stands dismissed having been barred by limitation.

(Pradip Kumar Mohanty, A.C. J.)

(Ananda Sen, J.)

Sharma-Anu/-