

Before T.P.S. Mann, J.

RAMESHWAR & OTHERS,—Appellant

versus

SADHU & OTHERS,—Respondents

R.S.A No. 1196 of 2004

15th May, 2008

***Limitation Act, 1963-S.5—Code of Civil Procedure, 1908—
Delay of about 8 months in filing second appeal—Condonation of
delay sought on plea that was not aware of passing of judgment
by trial Court—Whether sufficient cause for seeking condonation
of delay shown—Held, yes—Rights of parties not determined on
merits—Courts should adopt an extremely liberal approach while
considering plea for condonation of delay raised by a litigant
coming from rural area—Appeal allowed, matter remanded to 1st
Appellate Court.***

Held, that majority of people living in the country are ignorant of their rights. They are not even aware of the intricacies of law and proceedings in the Courts and Tribunals. They rest content with earning their livelihood and suffer injustice at the hands of all and sundry. Under these circumstances, the Courts should adopt an extremely liberal approach while considering the plea of condonation of delay raised by a litigant coming from rural area. If the old and antiquated rule that each day's delay should be satisfactorily explained is applied in such cases, grave injustice would be done to majority of population living in the rural areas. Persons like the appellants would get deprived of their legitimate right to seek justice.

(Para 10)

Further held, that while taking a liberal view, one may safely give benefit to the appellants to pursue their appeal before the learned lower appellate Court after granting them appropriate latitude in the matter of condonation of delay in filing of the said appeal, more so, when the rights of the parties have not been determined on merits by

the learned lower appellate Court, instead the appellants have been shut out at the very first stage i.e. admission of the appeal. At the same time, the respondents, who are represented herein the present second appeal can be compensated adequately for holding up of the proceedings at the hands of the appellants as the latter had been able to obtain an order of status quo regarding possession from this Court at the time of issuance of motion i.e. 9th April, 2004.

(Para 14)

S. S. Dinarpur, Advocate *for the appellant.*

Anil Kshetarpal, Advocate *for respondents* No. 2, 3, 5 and 21 to 23.

T.P.S. MANN, J.

(1) Respondent No. 1, herein, filed a suit for possession of specific portion after partition by metes and bounds of property measuring 26 Kanals comprising Khewat No. 138 min Khatouni No. 369 min. rect No. 70 Khasra Nos. 5/3 (2-0), 6(8-0), 7(8-0), 15(8-0), Kittas 4 situated at village Ghalaur, H.B. No. 159 Sub-Tehsil Radaur Tehsil Jagadhri, District Yamuna Nagar and consequently for permanent injunction restraining the defendants from raising construction over any specific portion of the suit land till the final partition of the same.

(2) *Vide* judgment dated 3rd October, 1996, learned Civil Judge (Junior Division), Jagadhri passed a preliminary decree in favour of respondent No. 1 for possession of specific portion of the suit property after its partition by metes and bounds. The defendants in the suit were restrained from raising any construction over any specific portion of the suit land till final partition of the same. Application was, thereafter, filed by respondent No. 1 for preparation of final decree. An objection was raised by Maya Ram, but later on he withdrew the same by making a separate statement that he had no objection if the final decree was prepared as per report of Local Commissioner. Ultimately, on 29th January, 2003, learned trial Court ordered for preparation of final decree as per report of the Local Commissioner.

(3) Aggrieved of the same the appellants filed an appeal before learned District Judge, Yamuna Nagar at Jagadhri on 24th September, 2003. As there was a delay of approximately eight months in filing of the appeal, an application was also filed by the appellants for condonation of the delay. This application was duly supported by an affidavit.

(4) Learned lower appellate Court dealt with the application filed under Section 5 of the Limitation Act for the condonation of delay and held that the appellants miserably failed to show any cause, much less sufficient cause, for the condonation of delay in filing the appeal. The application was, consequently, dismissed. In view of the dismissal of the application, even the appeal did not survive for consideration and was also dismissed. Under these circumstances, the appellants filed the present second appeal in this Court.

(5) The substantial question of law involved in the present appeal is as to whether the appellants had any sufficient cause for seeking condonation of delay in filing of the appeal before the learned lower Appellate Court after a lapse of approximately eight months.

(6) It is submitted on behalf of the appellants that the Local Commissioner did not demarcate the property on the spot and the decree was passed by learned trial Court as per the report of previous Local Commissioner. The appellants came to know about the report of the previous Local Commissioner only on 17th September, 2003 when warrants of possession were issued in favour of the respondents and the Halqa Kanungo visited the spot to execute the same. Further, the delay in filing of appeal was neither intentional nor a delaying tactic to cause loss to the opposite party.

(7) On the other hand, learned counsel for the respondents submitted that the appellants were fully aware of the order passed by the learned trial Court on 29th January, 2003 when on the application of Sadhu and others, final decree was passed. Therefore, they had not been able to show any sufficient cause for seeking condonation of delay in filing the appeal.

(8) I have heard learned counsel for the parties and perused the impugned judgment.

(9) The only cause shown by the appellants before the learned lower appellate Court in seeking condonation of delay was that they were not aware of the passing of the judgment by the learned trial Court on 29th January, 2003 and they came to know about the same on 17th September, 2003 when Halqa Kanungo went to the spot to execute the warrants of possession. *Prima facie*, aforementioned version set up by the appellants is not borne from records. The judgment of the learned trial Court was passed in the presence of learned counsel representing the present appellants. In such a situation, the appellants were deemed to be present before the learned trial Court so as to receive the judgment. They have not taken any plea that they were not at all informed by their counsel, who represented them before the learned trial Court. Under these circumstances, it cannot be said that the appellants had been able to establish any cause, much less sufficient cause, so as to seek condonation of delay in filing of the appeal.

(10) However, majority of people living in the country are ignorant of their rights. They are not even aware of the intricacies of law and proceedings in the Courts and Tribunals. They rest content with earning their livelihood and suffer injustice at the hands of all and sundry. Under these circumstances, the Courts should adopt an extremely liberal approach while considering the plea for condonation of delay raised by a litigant coming from rural area. If the old and antiquated rule that each day's delay should be satisfactorily explained is applied in such cases, grave injustice would be done to majority of population living in the rural areas. Persons like the appellants would get deprived of their legitimate right to seek justice.

(11) The aforementioned view is clearly spelled out from **Collector, Land Acquisition, Anantnag versus Mst. Katji (1)**, wherein it was held that Courts should adopt liberal approach in condoning the delay. It was observed as under :—

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression

(1) AIR 1987 S.C. 1383

“sufficient cause” employed by the legislature is adequately elastic to enable the Courts 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. And such a liberal approach is adopted on principle as it is realized that :—

- (1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- (2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- (3) “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.
- (4) 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.
- (5) 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.
- (6) It must be grasped that judiciary is respected not on account of its power to legalize 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.”

(12) A similar view echoed in **M.K. Prasad versus P. Arumugam (2)**, when the Apex Court once again stressed for adopting a liberal approach in condonation of delay. The relevant observations are reproduced here-in-below :—

“In construing S.5 of the Limitation Act, the Court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The Court has a discretion to condone or refuse to condone the delay as is evident from the words “may be admitted” used in the section.

xxx xxx xxx xxx

Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the *ex parte* decree, the Court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties.”

(13) In **Ram Kishan and another versus U.P. State Roadways Transport Corporation and another (3)**, the Court, even when it did not find the story put forward by the appellants to be convincing, condoned the delay in filing of the application for compensation before the Motor Accidents Claims Tribunal and remanded the case.

(14) Keeping in view the aforementioned observations of the Hon’ble Supreme Court and while taking a liberal view, one may safely give benefit to the appellants to pursue their appeal before the learned lower appellate Court after granting them appropriate latitude in the

(2) AIR 2001 S.C. 2497

(3) 1994 Supp. (2) S.C.C. 507

matter of condonation of delay in filing of the said appeal, more so, when the rights of the parties have not been determined on merits by the learned lower appellate Court, instead the appellants have been shut out at the very first stage, i.e. admission of the appeal. At the same time, the respondents, who are represented herein the present second appeal can be compensated adequately for holding up of the proceedings at the hands of the appellants as the latter had been able to obtain an order of *status quo* regarding possession from this Court at the time of issuance of motion i.e. 9th April, 2004.

(15) Resultantly, the appeal is accepted. Delay in filing of appeal by the appellants before learned lower appellate Court shall stand condoned. The matter is remanded to lower appellate Court with a direction to admit the appeal and decide the same within six months of the admission. The appellants shall pay a sum of Rs. 10,000 as costs to the respondents, who stand represented before this Court and stated to be the contesting respondents.

(16) Parties, through their counsel, shall appear before learned lower appellate Court on 21st July, 2008 for further proceedings.

R.N.R.

Before Permod Kohli, J.

MOORTI,—Appellant

versus

KAUR SINGH & OTHERS,—Respondents

R.S.A No. 3422 of 2005

14th March, 2008

Code of Civil Procedure, 1908-O.23 RI.3-A—Maintainability—Decree on basis of compromise passed—Allegations of fraud—Whether suit filed by respondents challenging compromise decree is maintainable—Held, no—Provisions of RI. 3-A of Order 23 imposes a restriction to challenge compromise decree by way of a separate suit—Only remedy available to avoid such consent decree to approach the Court which recorded the