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CASE COMMENTS

THE STATE OF MADHYA PRADESH & ORS VERSUS BHERULAL

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ABSTRACT

"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 bonafide, 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."

"The Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statues prescribed."

Why the Supreme Court of India was constrained to make such observations in its order dated 15th October, 2020, in the case of State of Madhya Pradesh versus Bhurelal? Was the Supreme Court right in observing that practice of incompetent or deliberate delay in filing appeal, categorized as "certificate cases", is becoming quite common and is adopted in many cases? Was the Supreme Court right in observing that an appeal is filed only to obtain a certificate of dismissal from the Supreme Court so as to put a quietus to the matter and thus, say that nothing could be done because the highest Court had dismissed the appeal? Was the approach of the Supreme Court in dismissing the plea for condonation of delay too pedantic? While dismissing the plea of the petitioner, did the

Supreme Court overlook cause of substantial justice and relied more on technical considerations like undue delay in filing appeal?

KEYWORDS- condonation, limitation, vigilantibus, dormientibus, jura, subveniun, republica

CITATION

SPECIAL LEAVE PETITION (C) 9217 OF 2020; IA No.62372/2020-CONDONATION OF DELAY IN FILING; DATE OF ORDER- OCTOBER 15, 2020

JUDGES

SANJAY KISHAN KAUL, J. & DINESH MAHESHWARI, J.

PARTIES

STATE OF MADHYA PRADESH (Petitioner)

BHURELAL (Respondent)

FACTS OF THE CASE- A special leave petition was filed by the Government of Madhya Pradesh (MP) with a delay of 663 days. In its defence the MP Government submitted that the reason for such an inordinate delay was, among others, "unavailability of the documents and the process of arranging the documents".

JUDGEMENT-The division bench of Supreme Court of India reprimanded the Madhya Pradesh (MP) Government for filing an appeal after a delay of 663 days. Dismissing the appeal as time-barred, the bench also imposed a costs of Rs.25,000/- on the State Government. The amount was to be deposited in four weeks with the Mediation and Conciliation Project Committee. The Court made it clear that the costs were to be recovered from the officers responsible for the delay in filing the appeal and a certificate of recovery of the said amount would also have to be filed in the Court within the same time period, failing which contempt proceedings would be initiated against the Chief Secretary. While dealing with the delayed appeal, the Supreme Court said that this incompetent or deliberate delay is not limited to the MP Government only. The Supreme Court observed that such practice, categorised by the court as "certificate cases", is

becoming quite common and is adopted in many cases when an appeal is filed only to obtain a certificate of dismissal from the Supreme Court so as to put a quietus to the matter.

The bench said it was constrained to pen down a detailed order as it appeared that "all our counselling to Government and Government authorities have fallen on deaf ears. The Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statues prescribed.

The bench noted that "condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. 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."

CASE COMMENT- The casual manner in which the state authorities filed the petition and the preposterous proposition that the petitioner sought to propound that if there is some merit in the case, the period of delay is to be given a go-by, compelled the bench of the Supreme Court to pass a detailed order reprimanding the authority that condonation of delay should not be used as a plea for the benefit of some. The Court also pointed out that the object for filing an appeal after this inordinate delay appeared to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court had dismissed the appeal. It is to merely complete the formality and save the skin of some officials who may have been guilty of negligence.

In an earlier decision in the case of **Sagufa Ahmed & Ors.**[CIVIL APPEAL NOs.3007-3008 OF 2020, September 18, 2020], where an appeal was filed challenging the order passed by the National Company Law Appellate Tribunal (NCLAT), which had earlier dismissed the appellants application for condonation of delay, a three judge bench of Chief Justice S. A. Bobde and Justices A. S. Bopanna and V. Ramasubramanian had pointed out:

"That the law of limitation finds its root in two Latin maxims, one of which is vigilantibus non dormientibus jura subveniunt, which means that the law will only assist those who are vigilant about their rights and not those who sleep over them."

"*Interest republica ut sit finis litum*"- It is in the interest of the State that there should be an end to litigation process- is the other maxim on which the Law of limitation is based

Section 3 of Indian Limitation Act lay down the general rule of Limitation Act and reads as under:

"Subject to the provisions contained in **Sections 4** to **24** (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

"Mere reading of **Section 3** of the Act shows that it is mandatory and absolute in nature. It enjoins upon the court to dismiss any suit instituted, appeal preferred or application made after the prescribed period of limitation, although limitation has not been set up as a defence. Courts have no discretion or inherent powers to condone the delay if the suit is filed beyond the prescribed period of limitation, rather a duty is cast on the court to dismiss the suit, appeal or application if the same is barred by limitation unless matter is covered by **Sections 4** to **24** of the Act."

Section 4 of the Act provides that where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may

be instituted, preferred or made on the day when the court reopens. Then Section **5** of the Act provides that an appeal or any application other than the application under any of the provisions of Order **21** of the Code of Civil Procedure may be admitted after the prescribed period, if the appellant or applicant satisfied the Court that he had **sufficient cause** for not preferring an appeal or making the application within such period. **Sections 6** to **8** of the Act extend the period of limitation in cases where the limitation expires before the cessation of disability, i.e. minority, insanity or idiocy. **Sections 12** to **15** of the Act provide for excluding certain periods in computing the period of limitation. The time spent in obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded while computing the period of limitation prescribed for an appeal or an application for leave to application and an application for review of judgment. In the same way the time spent in obtaining the copy of the award shall be excluded, while computing the period of limitation to file an application to set aside an award (**Section 12**).The time taken for prosecuting an application for leave is to be excluded if leave is necessary while computing the period of limitation for a suit or appeal (**Section 13**). When the plaintiff has been prosecuting with due diligence another same proceedings the time spent in it shall be excluded while computing the period of limitation (**Section 14**). When an injunction or order has been obtained to stay the institution of suit, the time spent in obtaining injunction or order shall be excluded while computing the period of limitation (**section 15(1)**.When notice is served before the institution of a suit, the limitation shall be suspended during the period of notice (**Section *15(2)***). The period of limitation shall exclude the period beginning with the date of institution of proceedings of winding up/liquidation in case of insolvency etc and ending ending with the expiry of three months from the date of appointment of such receiver or liquidator**(section 15(3)),**The period of limitation shall be suspended during the time for which the proceedings to set aside the sale has been prosecuted in a suit for possession by purchaser at an execution sale (**Section 15(4)**).If the defendant is absent from India or in the territories beyond India, under the administration of the Central Government, the time upto which he has been absent shall be excluded while computing the period of limitation ***(Section 15(5))***.

Then **Sections 16** to **24** of the Act provide for the effect of death, fraud, mistake, acknowledgement in writing, part payment, addition or substitution of new plaintiffs or defendants, and continuous wrong. In such cases, the Act provides the date from which the fresh period of limitation shall begin to run.

The provisions of **Section 5** of the Act are an exception to the general rule laid down in **Section 3** that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed.

Section 5 applies only to appeal and certain applications mentioned therein and not on the suits. The reason is that period prescribed for applications and appeals mentioned in this Section does not exceed six months while for suit is extends from 3 to 12 years. Therefore, this conclusion has been given in this Section for applications and appeals in certain circumstances.

The term `sufficient cause' used here has not been defined in this Act. Its meaning, therefore, can be accepted as a cause which is beyond the control of the party invoking the aid of this Section . This term `sufficient cause' must of course, be given a liberal meaning so as to advance substantial justice. The sufficient cause can be determined from the facts and circumstances of a particular case. The power given to the courts under **Section 5** above is discretionary yet it has to be exercised in a judicial manner keeping in view the special circumstances of the each case.

(1) Illness : Illness is considered as `sufficient cause' to get benefit of Section 5, but mere plea of illness is not sufficient cause for not filing proceeding in time unless it is shown that the appellant or applicant was utterly disabled to attend to any duty.

(2) Imprisonment : A person can be given the benefit of Section 5 if he is undergoing imprisonment due to some criminal act. The time spent by him in the jail may be deducted from the prescribed period of time.

(3) Mistaken Legal Advice : A mistaken advice given by a legal practitioner may in circumstances of particular case give rise to `Sufficient Cause' within the

meaning Section 5. (4) Illiteracy : The fact that appellant was illiterate is not sufficient reason to condone the delay.

(5) Delay in obtaining copies Such delay shall be deemed as sufficient cause for granting benefit of Section 5 of this Act.

In **Collector, Land Acquisition v. Mst. Katiji, AIR 1987 S.C. 1353,** their Lordships of the Supreme Court laid down the following guiding principles:

1. Ordinarily a litigant does not stand to benefit by lodging on 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 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.

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 it is expected to do so.

The appellants' blind reliance on the above decision of **Collector**, **land Acquisition vs. Mst. Katiji & Ors**, was not appreciated by the bench, as can be seen from the following observations of the bench of Justice Sanjay Kishan Kaul and Dinesh Maheshwari-

"No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when

technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:

"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."

A careful reading of the order of the Supreme Court makes it clear that the decision of the Court was not meant to defeat or ignore substantial justice but to highlight the negligence and casual approach of State authorities. As the bench stressed, they are constrained to pen down a detailed order given that all their counselling has fallen on deaf ears. What the court conveyed was that no litigant should benefit from deliberate delays, culpable negligence or on account of mala-fides.

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