2024 INSC 281

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(ARISING OUT OF SLP (C) NO.14974 OF 2022)

K.B. LAL (KRISHNA BAHADUR LAL) ...APPELLANT

Versus

GYANENDRA PRATAP & ORS. ...RESPONDENTS

J U D G M E N T

SUDHANSHU DHULIA, J.

1. Leave granted.

2. The appellant before this court has challenged the order dated 19.05.2022 passed by the High Court of Judicature at Allahabad, by which the petition filed by the appellant under Article 227 of the Constitution of India was dismissed. The appellant had invoked the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, against the order dated 28.03.2022 of the Additional District Judge,

Barabanki, who had upheld the order dated 07.10.2021 of the Civil Judge (Jr. Division), Barabanki.

3. The dispute between the parties to this appeal relates to a piece of land situated in village Gharsaniya, Pargana Dewa, Tehsil-Nawabganj, District - Barabanki, which was sold by one Kalawati (Respondent No. 4 herein) to one Mansa Ram (Respondent No. 5 herein), vide sale deed dated 30.03.2006. Thereafter, the property was sold by Respondent No. 5 to the appellant herein vide a registered sale deed dt. 13.04.2006.

4. On 22.04.2006, Civil Suit for permanent injunction and cancellation of the sale deed dated 30.03.2006, was filed by the Respondent Nos. 1, 2 & 3 herein before the Civil Judge (Jr. Division), Barabanki. The appellant was impleaded as Defendant No. 3 in the suit. It was contended before the Trial Court by Respondent Nos. 1, 2 & 3 that Respondent No. 4 had no transferrable right or title over the property when the sale deed dated 30.03.2006 was executed in favour of Respondent No. 5 and thus, the property could not have been sold to Respondent No. 5. Respondent Nos. 1, 2 & 3 asserted their claim over the property before the Trial Court stating that they were the bhumidhar & joint owners of the suit property and were also in

possession of the same because the predecessor-in-interest of the property was their uncle and he had executed a will deed dated 20.05.1997 in their favour.

5. After service of notice, vakalatnama of the appellant's counsel was filed on 22.04.2006. During the course of the hearing, an order dated 06.09.2006 was passed by the trial court, by which the suit was to proceed ex-parte against the appellant. In the order dated 06.09.2006, it was recorded by the Trial Court that a perusal of the record would indicate that the appellant was duly served, but he did not file any written statements, and thus, it would be appropriate to proceed ex-parte against him. It is this order of the trial court, which was sought to be recalled by the appellant by filing an application under Order IX, Rule 7 of the Code of Civil Procedure, 1908 (hereinafter "CPC"). However, this application was filed by the appellant on 01.09.2017, i.e. after an inordinate delay of almost 11 years. To explain the delay, the appellant argued that the summons and notice of the case were not received by him and that the advocate appointed by him belonged to another city, who did not pursue the case diligently, and it was only in the year 2011, when he inspected the case file that he came to know about the order

dated 06.09.2006. Even here as to why it took him another 6 years to file the application, as he had the knowledge in any case in the year 2011, has not been explained. But this is not enough. Even this application, filed in the year 2017, was admittedly not pressed before the Trial Court by the appellant, for the reason that correct facts were not mentioned in the application. Finally, another application under Order IX, Rule 7 of the CPC came to be filed yet again by the appellant on 23.11.2020.

6. This second application filed by the appellant was dismissed by the trial court vide order dated 07.10.2021. What weighed in with the trial court, while dismissing the appellant's application under Order IX, Rule 7 of the CPC, was the fact that the appellant was duly served and had filed vakalatnama of his counsel in April 2006 but did not file written statements in time and on 12.07.2011 an application was filed by the appellant, seeking permission to file the written statements. It was noted by the Trial Court that the explanation tendered by the appellant for the delay in filing the application under Order IX, Rule 7 of the CPC was that the advocate appointed by him at the time of receiving summons, i.e., April 2006, did not pursue the matter diligently and had defrauded the appellant. Thus, the appellant

appointed another advocate, namely Shri R.D. Rastogi in May 2006. This explanation, as noted by the trial court, was based on contradictory statements and wrong facts, and no reasonable cause was given for the delay caused. Hence, it was dismissed.

7. Aggrieved by order dated 07.10.2021 by which his application under Order IX, Rule 7 of the CPC for setting aside the order dated 06.09.2006 was dismissed by the trial court, the appellant preferred a Revision, which came before Additional District Judge, Barabanki (hereinafter referred to as "Revisional Court"). Vide order dated 28.03.2022, the revisional court dismissed the Civil Revision filed by the appellant. The revisional court, upon examination of the material on record, found that the first application under Order IX, Rule 7 of the CPC which was filed by the appellant on 01.09.2017, was not pressed, owing to the fact that initially he had appointed an advocate who did not attend the case, and wrong facts were mentioned by a 'junior advocate' in the first application. Hence, another advocate filed the second application on 23.11.2020, mentioning the correct facts. Yet, the signature on the first application filed in the year 2017 and on that of the second application filed in the year 2020 were of the same advocate, namely, Shri R.D. Rastogi. It was also

observed by the revisional court that although it was averred by the appellant that he was put in dark by the counsel earlier engaged by him, there is no reference to his name. Thus, upon consideration of the entire material on the record, it was held by the revisional court that the application under Order IX, Rule 7 of the CPC for recalling order dated 06.09.2006 was filed by the appellant not only after a long delay of 14 years, but also without assigning any satisfactory reasons for the delay, hence, the revisional court found no error in the order dated 07.10.2021 of the trial court and accordingly, the Civil Revision preferred by the appellant was dismissed.

8. Assailing the order of the revisional court, the appellant filed a petition under Article 227 of the Constitution of India, invoking the supervisory jurisdiction of the High Court of Judicature at Allahabad. The High Court, vide impugned order dated 19.05.2022, affirmed the orders of both the courts below and dismissed the petition filed by the appellant. The High Court, while dismissing the said petition, took note of the fact that the suit was filed before the trial court in the 2006, by the respondent-plaintiffs and the appellant-defendant appeared and filed the vakalatnama of his counsel on 22.04.2006 and in the

year 2011, moved an application seeking permission to file written statements. Upon consideration of the fact that the appellant's counsel remained the same throughout, the High Court was of the opinion that while filing the application in the year 2011, the appellant's counsel would definitely have come to know about the order dated 06.09.2006, by which the trial court had decided to proceed ex-parte against the appellant. Despite this, the first application under Order IX, Rule 7 of the CPC was moved only on 01.09.2017, which was also not pressed for 3 years, and then the second application was moved on 23.11.2020 without showing any "good cause", as required under Order IX, Rule 7 of the CPC. Thus, no perversity was found by the High Court in the orders of both the courts below. The High Court hence refused to exercise its supervisory jurisdiction under Article 227 of the Constitution, and in our opinion, rightly so.

In this case the main question is of delay. Should an inordinate delay, which has no reasonable explanation be condoned?

9. Whether an application filed by the appellant, under Order IX, Rule 7 of the CPC can be allowed, after a delay of almost 14

years, is the only question before us. Was there a sufficient cause for filing such a belated application?

Although the term 'sufficient cause' has not been defined in the Limitation Act, it is now well-settled through a catena of decisions that the term has to be construed liberally and in order to meet the ends of justice. The reason for giving the term a wide and comprehensive meaning is quite simple. It is to ensure that deserving and meritorious cases are not dismissed solely on the ground of delay.

10. There is no gainsaying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (*See* ***Majji Sannemma @ Sanyasirao*** *v.* ***Reddy Sridevi & Ors.*** **(2021) 18 SCC 384**). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (*See* ***P.K. Ramachandran*** *v.* ***State of Kerala and Anr.,*** **(1997) 7 SCC 556**). Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (*See*

Basawaraj and Anr. *v.* ***Special Land Acquisition Officer.***, **(2013) 14 SCC 81**). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in ***Esha Bhattacharjee*** *v.* ***Managing Committee of Raghunathpur Nafar Academy & Ors.***, **(2013) 12 SCC 649**, and are reproduced as under:

> "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.
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> 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.
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> 21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
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> **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.**
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> **21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.**
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> 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.
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> **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.**
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> **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.**
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> **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.**
> ……."
>
> (emphasis supplied)

Having perused the application under Order IX, Rule 7 of the CPC dated 23.11.2020, filed by the appellant, and the accompanying affidavit, wherein the appellant had sought the benefit of Section 5 of the Limitation Act, for condonation of a delay of almost 14 years, we find there was no satisfactory or reasonable ground given by the appellant explaining the delay. We say this for two reasons. First, it is an admitted position by the appellant himself that upon an inspection of the case file in the year 2011, he came to know about the order dated 06.09.2006, by which the Trial Court had decided to proceed ex-parte against

him. What prevented the appellant from filing the application under Order IX, Rule 7 that year itself has not been satisfactorily explained at all, as the first application was only filed in the year 2017. Secondly, the explanation offered by the appellant, which is that the advocate appointed by him did not pursue the matter diligently, and then another advocate was appointed by him who inadvertently forgot to file the application does not find support from the records. What is clear is that the appellant has been grossly negligent in pursuing the matter before the trial court. Thus, the trial court, the revisional court as well as the High Court, were correct in dismissing the belated claim of the appellant. We find no reason to interfere with the impugned order dated 19.05.2022 of the High Court of Judicature at Allahabad.

The appeal stands dismissed.

.....J.
[SUDHANSHU DHULIA]

....J.
[PRASANNA B. VARALE]

New Delhi.
April 08, 2024.