THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

D.B.: HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No. 1 of 2019
in
W.A. No. 2 of 2019

The Dean,
I.K. Gujral Punjab Technical University,
Near Pushpa Gujral Science City,
Ibban, Kapurthala -144603,
District Kapurthala,
Punjab.

..... Applicant/Appellant

Versus

1. Sikkim Students Welfare Association of Chandigarh,
Through its President, Mr. Karma Gyatso Bhutia,
S/o Mr. Karma Sonam Bhutia,
R/o Dhajay, Near Ranka Senior Secondary School,
P.O. & P.S. Gangtok,
East Sikkim.

2. Sikkim Students Welfare Association of Chandigarh,
Through its General Secretary Mr. Sujendra Rai,
S/o Shri Ashman Rai,
R/o Lower Work,
P.O. Wok & P.S. Jorethang,
South Sikkim.

3. Sikkim Students Welfare Association of Chandigarh,
Through its Treasurer Mr. Gyurmee Bhutia,
S/o Ms. Pasaang Bhutia,
R/o Ghurpisey, Namchi,
P.O. & P.S. Namchi,
South Sikkim.

4. State of Sikkim,
Through Chief Secretary,
Government of Sikkim,
Gangtok.

5. Secretary,
Social Justice Empowerment and Welfare Department,
Samaj Kalyan Bhawan-Bal Bhawan,
Lumsay, 5th Mile Tadong, Gangtok,
Government of Sikkim,
Gangtok,
East Sikkim.

6. Secretary,
Department of Social Justice Empowerment,
Room No. 721-A Wing,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
Government of India,
New Delhi.

7. The Principal,
I.T.F.T. Education Group,
SCO 1-2-3,
Level III, 17 D, Sector-17
Chandigarh, 160017,
Punjab.

8. Additional Chief Secretary,
Education Department,
Government of Sikkim,
Gangtok,
East Sikkim.

9. Indira Gandhi National Open University,
Regional Centre, Gangtok,
5th Mile, Tadong,
P.O. Tadong, P.S. Gangtok,
East Sikkim.

10. University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi,
Pin-110002.

11. Secretary,
Ministry of Tribal Affairs,
Ground Floor, D. Wing,
Shastri Bhawan,
New Delhi,
Pin-110001. .....Respondents

Application for Condonation of Delay
under Section 5 of the Limitation Act, 1963.

Appearance:

Mr. A. K. Upadhyaya, Senior Advocate with Mr. Sonam Rinchen Lepcha, Advocate for the Applicant/Appellant.

Mr. Gulshan Lama, Advocate for Respondents No. 1, 2 and 3.

Mr. Sujan Sunwar, Assistant Government Advocate for Respondents No.4, 5 and 8.

Mr. Karma Thinlay Namgyal, Central Government Counsel for Respondents No. 6 and 11 and as Senior Counsel for Respondent No.10.

Mr. Leonard Gurung, Advocate for Respondent No.9.

None appears for respondent no. 7.

Date of hearing : 29.09.2020
Date of Order : 07.10.2020

O R D E R

Bhaskar Raj Pradhan, J.

1. The applicant seeks to prefer Writ Appeal No. 2 of 2019 challenging orders dated 22.07.2019, 06.09.2019 and 18.10.2019, passed by the learned Single Judge of this court in W.P.(C) No 60 of 2016 (the writ petition) as well as an order dated 03.09.2019 passed in Review Petition (C) No. 1 of 2019 (the review petition). Writ Appeals are preferred under Rule 148 of the Sikkim High Court (Practice & Procedure) Rules, 2011 which prescribes a

period of 30 days from the date of the judgment, decree or final order as the period of limitation for an appeal. According to the applicant there is a delay of 103 days. The applicant explains that against the order dated 22.07.2019 they had preferred the review petition before this court which was rejected on 03.09.2019. Aggrieved thereby, the applicant preferred Special Leave Petition (C) No.22416-22418/2019 (the Special Leave Petition) against the orders dated 22.07.2019, 06.09.2019 and 03.09.2019 passed in the writ petition and the review petition. The Special Leave Petition was, however, withdrawn by the applicant with liberty to approach this court granted by the Hon'ble Supreme Court vide order dated 30.09.2019. The applicant, thereafter, filed I.A. No. 9 of 2019 in the writ petition before this court praying for reconsideration of order dated 22.07.2019. This application was rejected by the learned Single Judge on 18.10.2019. The applicant preferred Writ Appeal No. 1 of 2019 against the order dated 18.10.2019 passed by the learned Single Judge. Writ Appeal No. 1 of 2019 was, however, withdrawn on 22.11.2019 on the ground that they had inadvertently not challenged the order dated 22.07.2019 and 06.09.2019 passed in the writ petition and the order dated 03.09.2019 passed in the review petition. The prayer to withdraw with liberty as

prayed for was granted and Writ Appeal No. 1 of 2019 was disposed as withdrawn with liberty as prayed for by order dated 22.11.2019.

2. In the application, besides narrating these facts, the applicant further explains that the learned counsel for the applicant started drafting the fresh writ appeal which took two-three days. The same was submitted to the learned Senior Counsel for vetting the draft who also took two-three days to settle it. Certain clarification was sought for from the applicant and on receipt thereof, the learned counsel for the applicant redrafted the memo of appeal and resubmitted the draft to the learned Senior Counsel who then settled it. The process took few more days. Writ Appeal No. 2 of 2019 along with the present application for condonation of delay was finally ready on 02.12.2019 and filed on the same date.

3. The applicant contends that although the applicant ought to have filed a writ appeal against the order dated 22.07.2019, on a wrong advice, the applicant moved the Hon'ble Supreme Court by preferring Special Leave Petition and consequently, a delay of 103 days occurred in moving the writ appeal because of approaching wrong forums. The applicant pleads that the delay is

unintentional and *bona fide* and it was for the aforesaid reasons that the applicant was prevented by sufficient cause for not preferring the writ appeal within the statutory period of limitation of 30 days. The applicant further submits that they have a genuine case on merits and if the delay is not condoned, the applicant would suffer irreparable loss.

4. The respondents no. 1 to 3 opposes the application for condonation of delay. In their affidavit dated 19.06.2020, they contend that the applicant has utterly failed to show sufficient cause and the lone reason tendered is frivolous. It is contended that the period of limitation having expired, the respondents have obtained the benefit under the law of limitation to treat the impugned order dated 22.07.2019 as beyond challenge, and this legal right accrued to the respondents by lapse of time should not be ignored and lightly disturbed. The respondents no. 1 to 3 contends that the reasons given by the applicant are also vague and no clear picture emerges as to why the Special Leave Petition was withdrawn. They further contend that the conduct of the applicant reflects a casual and lackadaisical attitude in preferring Writ Appeal No. 2 of 2019. It is also the case of the respondents no.1, 2

and 3 that the applicant has no case on merits in the Writ Appeal No. 2 of 2019.

5. Heard Mr. A. K. Upadhyaya, learned Senior Counsel along with Mr. Sonam Rinchen Lepcha, learned counsel for the applicant; Mr. Gulshan Lama, learned counsel for respondents no. 1, 2 and 3; Mr. Sujan Sunwar, learned Assistant Government Advocate for respondents no. 4, 5 and 8; Mr. Karma Thinlay Namgyal, learned Central Government Counsel for respondents no. 6 and 11 and as Senior Counsel for respondent no. 10 and Mr. Leonard Gurung, learned counsel for respondent no. 9. None appeared for respondent no. 7.

6. During the course of hearing, Mr. A.K. Upadhyaya referred to the judgment of the Hon'ble Supreme Court in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.***[1]. Paragraph 21 thereof, which enumerates the principles in deciding an application for condonation of delay, is quoted herein below:

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

[1] **(2013) 12 SCC 649**

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.***"**

7. Mr. A. K. Upadhyaya also referred to the judgment of the Hon'ble Supreme Court in ***J. Kumaradasan Nair & Anr. v. Iric Sohan & Ors.***[2]**,** to seek benefit of Section 14 of the Limitation Act, 1963. The Hon'ble Supreme Court held:

> **"*15.*** *The question which arises for consideration is as to whether only because a mistake has been committed by or on behalf of the appellants in approaching the appropriate forum for ventilating their grievances, the same would mean that the provision of sub-section (2) of Section 14 of the Limitation Act, which is otherwise available, should not be taken into consideration at all. The answer to the said question must be rendered in the negative.*
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> ***16.*** *The provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake. The provisions of Sections 5 and 14 of the Limitation Act alike should, thus, be applied in a broadbased manner. When sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean that the principles akin thereto would not be applied. Otherwise, the provisions of Section 5 of the Limitation Act would apply. There cannot be any doubt whatsoever that the same would be applicable to a case of this nature.***"**

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[2] **(2009) 12 SCC 175**

8. While reiterating the pleadings in the affidavit dated 19.06.2020 filed by the respondents no. 1, 2 and 3, Mr. Gulshan Lama relied upon the judgment of the Hon'ble Supreme Court and Calcutta High Court in ***Balwant Singh (Dead) v. Jagdish Singh & Ors.***[3] and ***Bhakti Bh. Mondal v. Khagendra K. Bandopadhya & Ors***.[4], respectively. He submitted that once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away the right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Mr. Lama relied on the Calcutta High Court judgment to submit that it was incumbent upon the applicant to have filed an affidavit of the lawyer who had rendered wrong advice to it. He submits that failure to do so results in the failure to establish sufficient cause.

9. In ***Balwant Singh*** (supra), the Hon'ble Supreme Court held that liberal construction of the expression *"sufficient cause"* is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of *bona fide* is imputable. There could be instances where the court

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[3] **(2010) 8 SCC 685**
[4] **AIR 1968 Cal 69**

should condone delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect *"sufficient cause"* as understood in law. Reasonable time and proper conduct of the party concerned are important considerations. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party. Once a valuable right has accrued in favour of one party as a result of a failure of the other party to explain the delay by showing sufficient cause, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.

10. The High Court of Calcutta in ***Bhakti Bh. Mondal*** (supra) had taken the view that the Limitation Act applied to election petitions. The judgment cited by Mr. Lama has been overruled by the Hon'ble Supreme Court in ***Anwari Basavaraj Patil & Ors. v. Siddaramaiah & Ors.***[5] which, *inter alia*, held that Section 5 of the Limitation Act, 1963 was not applicable to election petition.

11. Mr. Karma Thinlay Namgyal submits that wrong advice of a lawyer as pleaded by the applicant cannot be

[5] **(1993) 1 SCC 636**

sufficient cause. To buttress his arguments, the learned Central Government Counsel, relied upon the judgment of Delhi High Court in ***Haro Singh v. Ajay Kumar Chawla & Ors.***[6]. Mr. Karma Thinlay Namgyal also sought to rely upon the judgment of the Hon'ble Supreme Court in ***Esha Bhattacharjee*** (supra) to submit that 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.

12. In ***Haro Singh (supra),*** the Delhi High Court preferred to follow the view taken in ***Babu Ram v. Devinder Mohan Kaura & Ors.***[7] and not the contrary view taken by the Delhi High Court in ***Krishan Lal v. Hanuman***[8]**.** The Delhi High Court was of the view that some High Courts as well as the Delhi High Court in ***Babu Ram*** (supra) had taken the view that the counsel must disclose the circumstances in which incorrect advice was given and it is not sufficient to make a perfunctory and general statement that the wrong advice was given *bona fide*. Thus, the Delhi High Court on the facts of ***Haro Singh*** (supra) held that no *"sufficient cause"* had been shown for condoning the delay.

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6 **2004 SCC OnLine Delhi 19**
7 **AIR 1981 Delhi 14**
8 **1993 SCC OnLine Del 45**

13. In ***Babu Ram*** (supra), the Delhi High Court held that:

> *"**22.** There is no universal rule that every mistaken advice given by the counsel constitutes sufficient cause or constitutes "good faith". Every case depends on its own facts. In some cases a bona fide opinion given by a counsel can constitute sufficient cause. It all depends how the opinion is given. If the opinion is given after taking due care and attention then it will amount to "good faith" as well as "sufficient cause". If the opinion is given off-hand without taking trouble of knowing the law on the point it may not constitute sufficient cause and/or "good faith". Unfortunately, in the present case, the learned counsel who gave the affidavit does not mention how he honestly believed that a revision petition was to be filed. There is no magic in the senior counsel saying that he "honestly gave the opinion." The senior counsel or for that matter any other counsel ought to further tell the court why he honestly gave that opinion. What was it that led him to give the mistaken advice? Was it something in the impugned judgment which led him to give such an advice or was there something in the law which made him give the mistaken advice, it is not sufficient in such cases to merely state that 'I am a senior counsel' or 'I am a very experienced counsel and I gave the opinion'. Which is of no use. The Court naturally expects that the counsel concerned while choosing to file an affidavit for giving mistaken advice would also state what led him to give such an advice. If this much is not expected from a counsel, it may lead to arbitrary decisions by Courts.***"***

14. The Hon'ble Supreme Court in the ***State of West Bengal v. The Administrator, Howrah Municipality***[9], relying upon the judgment rendered by the Privy Council in ***Kunwar Rajendra Singh v. Rai Rajeshwar Bali***[10] had held that mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient

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[9] **(1972) 1 SCC 366**

[10] **AIR 1937 PC 276**

cause within the section though there is no general doctrine which saves parties from the results of wrong advice.

15. We have examined the application as well as the reply filed by the respondents no. 1, 2 and 3. We have also heard the learned counsel for the respective parties and perused the judgments cited at the bar. The Hon'ble Supreme Court in ***Esha Bhattacharjee*** (supra) has categorically held that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay. 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. Substantial justice being paramount and pivotal, the technical considerations should not be given undue and uncalled for emphasis.

16. The facts evidently reveal that the applicant had approached this court as well as the Hon'ble Supreme Court against the orders sought to be challenged in Writ Appeal No. 2 of 2019 by preferring application for review, application for reconsideration and Special Leave Petition.

According to the applicant, they had approached the wrong forums on wrong advice.

17. It is, as argued by both Mr. Karma Thinlay Namgyal and Mr. Lama, not too clear as to on whose wrong advice the applicant did so. It is true that no affidavit of any lawyer has been filed to support the applicant's contention but there is no reason to disbelieve the statement of the applicant. The statement of the applicant is also supported by the narration of facts of what transpired during this period of 103 days. The application, read as a whole, cannot be termed perfunctory. It is evident that the applicant did approach different forums to ventilate its grievance before finally approaching this court by way of Writ Appeal No. 2 of 2019. The sequence of events which can be drawn from the orders passed in those proceedings does reflect that the applicant had, in fact, pursued remedy on wrong advice. It was because of the filing of the applications in the writ petition, the Special Leave Petition and Writ Appeal No. 1 of 2019, that substantial part of the total delay of 103 days had occasioned. The time taken for drafting the Writ Appeal No.2 of 2019 and settling the same, as explained in the application, was for a period of around a fortnight.

18. The applicant filed the review petition against the order dated 22.07.2019 passed by the learned Single Judge in the writ petition which was rejected on 03.09.2019 before the expiry of the period of 30 days provided for filing a writ appeal. When an order dated 06.09.2019 was passed in the writ petition, the applicant approached the Hon'ble Supreme Court and filed the Special Leave Petition against order dated 22.07.2019 and 06.09.2019 in the writ petition and order dated 03.09.2019 in the review petition. The applicant after withdrawing the Special Leave Petition, took liberty from the Hon'ble Supreme Court to approach this court and thereafter, filed an application i.e. I.A. No. 9 of 2019 in the writ petition for reconsideration of order dated 22.07.2019. This application was rejected by the learned Single Judge on 18.10.2019. It seems that only after the rejection of the application, it dawned upon it that it ought to have preferred a writ appeal. The applicant did so by filing Writ Appeal No. 1 of 2019 on 13.11.2019 but it soon realized that it had not challenged two other orders passed and accordingly withdrew the same on 22.11.2019 with liberty to file afresh. The Writ Appeal No. 2 of 2019 was thus filed on 02.12.2019 incurring a total delay of 103 days. The facts reflect that the legal advice received by the applicant to file the review petition, Special Leave Petition

and application for reconsideration was not sound. However, merely because the applicant followed the wrong advice, which was evidently received, it cannot be said that the applicant's conduct was casual and lackadaisical. The reason to withdraw the Special Leave Petition is to our mind not as important as the fact that the applicant had preferred it and later chose to withdraw it. No negligence or inaction can be imputed upon the applicant for pursuing diligently remedies before wrong forums on advice received. The limitation for filing Writ Appeal No. 2 of 2019 seems to have expired due to the fact that the applicant followed the advice received and filed the review petition, Special Leave Petition and the application for reconsideration. It, however, does reflect that the applicant was aggrieved and was trying to ventilate its grievance but before wrong forums. It cannot be said that there was deliberate causation of delay on the part of the applicant. Section 5 of the Limitation Act, 1963 provides that any appeal may be admitted after the prescribed period, if the applicant satisfies the court that it had sufficient cause for not doing so. Section 14 of the Limitation Act, 1963 provides that in computing the period of limitation the time during which the applicant had been pursuing with due diligence another proceeding shall be excluded. We are of the view

that the applicant is entitled to the benefit of Section 14 of the Limitation Act, 1963 as well. We are also of the view, that when we weigh the scale of balance of justice in respect of the contesting parties, justice would be better served if Writ Appeal No. 2 of 2019 is decided on merits instead of throwing it out on the ground of delay alone.

19. In the circumstances, sufficient cause having been shown by the applicant, the delay of 103 days in preferring the Writ Appeal No. 2 of 2019, is condoned.

20. The application is thus allowed.

21. I.A. No. 1 of 2019 stands disposed.

BHASKAR RAJ PRADHAN
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(Bhaskar Raj Pradhan)
Judge

ARUP KUMAR GOSWAMI
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(Arup Kumar Goswami)
Chief Justice

bp/to Approved for reporting: Yes/~~No~~
Internet: Yes/~~No~~