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IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Civil Revision Application No.34 of 2004

Province of Sindh and others
v/s.
Mirza Khan and others

Mr. Ali Liaquat Ali Shar, Additional Advocate General, Sindh
for the Applicants.

Makhdoom Syed Tahir Abbas Shah, Advocate for respondent
No.1.

Date of hearing: 13.08.2020

Date of Order: 13.08.2020

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**ORDER**

**Muhammad Junaid Ghaffar, J.:** This Civil Revision Application under section 115 C.P.C. has been filed by the applicants against Order dated 20.04.2004, passed by II-Additional District Judge, Jacobabad in Civil Appeal No.01 of 2004, whereby the same has been dismissed as being time barred and resultantly maintaining Judgment dated 02.06.2003 passed by Senior Civil Judge, Kandhkot in F.C.Suit No.27 of 2002, through which the suit of the respondents was decreed.

2. Learned Additional Advocate General, Sindh has contended that notwithstanding the fact that the appeal before the II-Additional District Judge, Jacobabad was time barred, the learned Appellate Court has failed to appreciate merits of the case, as it involves precious government land and therefore, the impugned order is bad in law. According to him, the learned Court also failed to decide the case on merits and has dismissed the Appeal on limitation, and therefore, on this ground as well, the impugned order cannot be sustained. He has

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also relied upon the grounds mentioned in this revision application and in support has placed reliance on the case reported as (2003 SCMR 83) (*Muhammad Bashir and another v/s. Province of Punjab through Collector of District Gujrat and others*).

3. On the other hand, learned counsel for the respondents has supported the impugned judgment on the ground that the Appeal was hopelessly time barred and delay could not have been condoned.

4. I have heard the learned Additional Advocate General, Sindh and the counsel for the respondent and have also perused the record. It is not in dispute that the appeal before the Additional District Judge Jacobabad was hopelessly time barred; inasmuch as the Judgment by the trial Court case was announced on 02.06.2003 and the applicants applied for certified copy of the Judgment and Decree on 01.09.2003, by which time the limitation of 30 (thirty) days for filing an appeal had already expired. Not only this, even after filing of this application copies were not obtained promptly and the appeal was presented on 11.11.2003, which reflects upon the conduct of the applicants. Though the learned Additional Advocate General has argued that since it involves government's precious land; therefore, the delay ought to have been condoned; however, it is not as simple as learned Additional Advocate General has contended. The Court having jurisdiction to entertain a case after expiry of limitation has to apply its mind in considering the request for condonation after going through the facts of the case. There is no general rule or precedent that in each and every case, where the government land or interest is involved, the delay must necessarily be condoned. Learned Additional Advocate General has relied upon the case of *Muhammad Bashir (supra)*, however, on perusal of the same it reflects that in that matter the Court below i.e. learned Lahore High Court had condoned the delay of 26 days in filing of civil revision application and on this the Honourable Supreme Court came to the conclusion that once a Court has exercised its jurisdiction and discretion

in condoning the delay, then ordinarily and without there being an exceptional case, the Court should not interfere in the exercise of such discretion. Here in the instant matter, it is the inverse; i.e. the facts are altogether opposite to the facts in the case relied upon by the learned Additional Advocate General. Here, the appellate Court has exercised its discretion in refusing to condone the delay and on perusal of the reasoning so assigned by the appellate Court, I am of the view that there is no illegality or jurisdictional defect in the reasoning and therefore while exercising its revisional jurisdiction under section 115 CPC, this Court ought not to interfere in the conclusion drawn and discretion exercised by the Appellate Court.

5. Even otherwise it is settled by the Honourable Supreme Court in a number of case that government departments cannot be accommodated in the matters of condoning delay, as it is consistent practice of these departments not to pursue their cases diligently and time and again they file appeals after expiry of limitation. Reliance in this regard may be placed on case reported as (2006 SCMR 1248) GOVERNMENT OF PAKISTAN through Ministry of Works and another V Messrs MALBROW BUILDERS, CONTRACTOR. The relevant finding is as under;

4. We have carefully examined the contentions as agitated on behalf of the petitioners, scanned the entire record and perused the judgments of Courts below. We have also examined the dictum as laid down by this Court in Managing Director SSGC Limited's case (supra) which is not applicable as it was given altogether in a different context and there is a drastic difference between both the cases. We may mention here that the question of limitation being not mere a technicality cannot be taken lightly and the rights accrued to the other party due to limitation cannot be snatched away without sufficient cause and lawful justification which are lacking in this case. We are conscious of the fact that sufficient cause is not capable of connotation with exactitude and would differ from case to case but laxity, carelessness and cursory approach of the functionaries of the Government do not constitute sufficient cause and hence the question of any indulgence does not arise. The delinquent officers/officials who are responsible for such delay must be taken to task being responsible for the loss of public exchequer.

6. In the case reported as (PLD 2002 SC 436) CHAIRMAN, DISTRICT EVACUEE TRUST, JHELUM V ABDUL KHALIQ through

Legal Heirs and others, The Hon'ble Supreme Court has been pleased to observe as under;

4. It has been pointed out number of times that cases pertaining to Federal/Provincial Government or autonomous bodies instituted beyond limitation prescribed by law before subordinate Court, High Court and this Court without assigning any justification acceptable under the law for not approaching the Court within time and in the applications seeking condonation of delay, if filed, invariably the plea is taken that time has been spent in completion of departmental proceedings, therefore, delay may be ~` condoned. The concerned department must know that delay of limitation in filing of proceedings can only be condoned if it is sought for on sufficient grounds otherwise in absence thereof no special indulgence can be shown to such department because it is well-settled that no preferential treatment can be offered to the Government department or autonomous bodies. Their cases have to be dealt with same manner as the cases of an ordinary litigant/citizen. In this behalf, reliance is placed on Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307), Lahore High Court, Lahore through Registrar v. Nazar Muhammad Fatiana and others 1998 SCMR 2376, Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others v. Jamaluddin and others 1996 SCMR 727, Pakistan through Secretary, Ministry of Defence v. Messrs Azhar Brothers Ltd. 1990 SCMR 1059 and Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another v. Muhammad Saleem PLD 1995 SC 396.

5. We are conscious that on declining relief either to the Government or public litigant in view of the provision of limitation, serious, injustice is caused to either of the party before the Court but we cannot help it in view of the existing law. However, concerning the cases belonging to the Government/autonomous bodies, at least one thing can be done that if case is decided against it on the question of limitation, the direction must be passed to the high-ups of the department so he/they may initiate departmental action against those officers who are directly or indirectly responsible for causing delay in instituting the cases beyond period of limitation and even in absence of such directions, it would be duty of such officer to take action accordingly because if such unscrupulous persons are not proceeded against, they will have no fear of causing huge losses to the Government/autonomous functionaries at the cost of public exchequer because ultimately it is the public at large who suffers, being ultimate beneficiaries of the Government property.

6. We appreciate the steps taken by the incumbent Chairman of Evacuee Trust Property Board, Lahore for initiating actions against the officers who are responsible for filing instant petition beyond period of limitation and we are hopeful that in future other responsible officers would also do so.

7. In the case reported as (1996 SCMR 727) *FEDERATION OF PAKISTAN through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others V JAMALUDDIN and others* it has been held as under;

14. The third appeal (C.A. 361/93) also does not merit any different fate. It is stated to be barred by 36 days and no good reason has been given by the appellants for condonation of delay. The ground taken in their application for condonation of delay is of routine type namely that "the matter remained in circulation for permission to file petition for leave to appeal before this Hon'ble Court" and that the time was consumed in office routine which was beyond the control of the appellants. Such a plea has never been accepted by this court as a valid ground for condonation of delay. Refer Commissioner of Income Tax v. Pir Ahmad Khan (1981 SCMR 37) wherein it was held "The time said to have been spent during which the various authorities were examining the matter with a view to decide whether an appeal should or should not be filed cannot be excused. This Court has repeatedly laid down that so far as the limitation is concerned, the Government cannot claim to be treated in any manner differently from an ordinary litigant. In fact, the Government enjoys unusual facilities for the preparation and conduct of their cases and its resources are much larger than those possessed by ordinary litigants. If in spite of these facilities the Government cannot comply with the requirement of the law of limitation, then it is for it to take steps to have that law changed". It is also settled law that the litigant seeking condonation of delay must explain the delay of each day. The excuse that the matter got delayed because of its having remained under examination at different departmental levels is not a proper and satisfactory explanation for the delay of 36 days. The appeal is, therefore, liable to be dismissed on the ground of being limitation-barred.

8. In the case reported as *Government of Punjab v Muhammad Saleem* (PLD 1995 SC 396) the Hon'ble Supreme Court had the occasion to examine a somewhat similar plea, as raised by the applicant in this revision, that since it is the interest of Government which is involved, therefore, the Court below ought to have condoned the delay, notwithstanding that condonation was not made out. In that case the Hon'ble Supreme Court, was pleased to hold that matter of condonation of delay lies within the discretion of the Court or Authority before whom same was agitated and exercise of such discretion could not be interfered with unless same was found illegal or arbitrary. The facts are almost identical here, whereas, admittedly no case of committing any illegality or arbitrariness has been made out. The relevant finding is as under;

5..... "This is so because the matter of condonation of delay lies within the discretion of the Court or the authority before whom it is agitated and exercise of this discretion cannot be interfered with unless it is found to be illegal or arbitrary. In the present case, the High Court gave good reasons for declining to condone the delay. It held that the ground taken by the appellants in their application under section 5 of the Limitation Act that they could not file the appeal within time as they had entered into correspondence with litigating departments and the Solicitor was quite vague and reliance was also placed on a judgement of this Court reported as 1990 SCMR 1059 wherein it

was held that "it is well settled principle of law that under section 5 of the Limitation Act, delay of each day is to be explained" and further that, the Government cannot be treated differently than a private litigant on the question of limitation under section 5 of the Limitation Act. discretion exercised by the High Court proceeded on correct appreciation of factual and legal position. It, therefore, does not call for any interference by this Court. It may be stated that even before us, learned Counsel appearing for the appellants has failed to explain each day's delay....."

In this matter the facts as available on record are identical. In this revision application it has been stated in para 6 that "*the petitioners preferred appeal against the judgment and decree dated 2.6.2003, as the same was dismissed as being time barred, as the Head Master of Government High School Kandhkot was conducting and pursuing the case who fell ill and subsequently expired on 18.7.2003, could not inform the higher authorities for the decision of the case decided on 2.6.2003*". After narrating further facts in para 7 and 8, it has been stated in para 9 "*that the EDO (Education) Jacobabad directed Head Master Government High School Kandhkot to file appeal vide his letter no.1231 dated 9.10.2003 and the District Attorney Jacobabad without loss of time filed Civil Appeal in the month of November 2003 i.e. 11.11.2003 along with application u/s 5 of limitation for condoning the delay.....*"

Perusal of the above stance taken before this Court, even otherwise, does not merits consideration as it is vague and uncertain in many terms. From their own pleadings, it is reflected that finally, and without prejudice, letter was issued on 9.10.2003 for filing of an appeal; however, it was filed on 11.11.2003, i.e. after delay of 32 days, whereas, it is stated to be *prompt* by the Applicants. This Court is unable to give any weightage to this absurd line of arguments and pleadings. This 32-day delay is even beyond the statutory / stipulated time of filing of an appeal; hence, even if this Court was to take a lenient view and exercise any discretion (*which it cannot*) no case for indulgence is made out in the given facts and circumstances of the case.

9. In view of hereinabove facts and circumstances of the case, I am of the view that no case for any indulgence is made out, as the appellate order impugned before this Court is correct in law, therefore, this Civil Revision Application does not merit any consideration and is accordingly dismissed.



Judge

Manzoor Junejo