

POONAM & OTHERS

v.

HARISH KUMAR AND ANOTHER
(Civil Appeal No. 9059 of 2011)

NOVEMBER 03, 2011

[ASOK KUMAR GANGULY AND
GYAN SUDHA MISRA, JJ.]

Delay/laches – Appeal – Delay of 63 days in filing appeal against the judgment and decree passed by trial court in a civil suit filed by the plaintiffs-appellants – Application for condonation of delay in filing appeal dismissed by the appellate court – Order upheld by High Court in revision – Held: When a Court exercises its discretion in either condoning or refusing to condone delay in filing any proceeding, the Court acts in exercise of its discretion – Normally, Supreme Court in exercise of its discretion under Article 136 of the Constitution may not interfere with the exercise of discretion by the High Court in such matters – However, there is no strait-jacket about this – The discretion of Supreme Court under Article 136 of the Constitution is meant to further the ends of justice and Supreme Court has been using its discretion in appropriate cases when it is satisfied that exercise of jurisdiction by the High Court or other Tribunals has not been on sound judicial principles – In the facts of this case it is clear that of all the three ladies, who were the appellants, one of them was pursuing the case and she fell sick – Therefore, she was not in a position to pursue the legal remedy with due diligence as a result of which the appeal was filed with a delay of 63 days – The delay of 63 days is not a delay for a long period and there was some explanation for the delay – The High Court should have considered the explanation for the delay along with the facts of the case, the position of the parties, the nature of the

- A *litigation and the period of delay – The High Court should also have considered that it has been settled by a catena of cases that, unless the delay is gross, an explanation for the same should be liberally construed – Apparently, the High Court was not able to consider all these relevant facts in their correct perspective before passing the impugned order – Order of the High Court set aside and delay in filing the appeal condoned – Constitution of India, 1950 – Article 136.*
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Appellants nos. 1 to 3 are sisters of Respondent no. 1, who is their brother. The parents of the parties had died. The appellants filed a civil suit for declaration of their title as 3/9th owner each, of the suit scheduled properties and for permanent injunction restraining Respondent no.1 from interfering with their peaceful possession and creating any third party rights in the said properties. The Trial Court dismissed the suit and accordingly a decree was drawn up.

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The appellants-plaintiffs challenged the judgment and decree by filing an appeal before the District Judge. The appellants-plaintiffs also filed an application for condonation of delay of 63 days in filing the appeal stating that appellant no. 2 and 3 were married and illiterate; that appellant no.1 was pursuing the case in the court but during pendency of the case, appellant no.1 fell ill and therefore requested the counsel to intimate to the appellants regarding the position of proceedings; that the counsel assured that he will inform the appellants as and when their presence was needed in the court, but the counsel never informed the appellants for giving their evidence in court, which resulted in dismissal of the case; that later someone from the locality informed the appellants about the dismissal of the case whereafter the appellants rushed to the Court and applied for a certified copy of the judgment and then filed the appeal a little belatedly. The District Judge dismissed the application for

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condonation of delay on the ground that the delay was not bona-fide and no reasonable cause has been made out to condone the delay. The reasoning of the District Judge for reaching the above conclusion was that, (i) the appellants were neither illiterate nor rustic villagers as all of them had signed in English and (ii) that during course of proceedings before the trial court, the appellants were careless and negligent. Against this order, the appellants preferred a revision before the High Court. The High Court upheld the order of the District Judge holding that the delay of 63 days in filing the appeal was not properly explained. Hence the present appeal.

Allowing the appeal, the Court

HELD:1. When a Court exercises its discretion in either condoning or refusing to condone delay in filing any proceeding, the Court acts in exercise of its discretion. Normally, this Court in exercise of its discretion under Article 136 of the Constitution may not interfere with the exercise of discretion by the High Court in such matters. However, there is no strait-jacket about this. The discretion of this Court under Article 136 of the Constitution is meant to further the ends of justice and this Court has been using its discretion in appropriate cases when it is satisfied that exercise of jurisdiction by the High Court or other Tribunals has not been on sound judicial principles. It is well settled that judicial discretion shall always be exercised "according to the rules of reason and justice and not according to private opinion" [Para 14] [297-C-F]

Sharpe v. Wakefield (1891 AC 193) – referred to.

2. In the facts of this case it is clear that of all the three ladies, who were the appellants, one of them was pursuing the case and she fell sick. Therefore, she was not in a position to pursue the legal remedy with due

A diligence as a result of which the appeal was filed with a
delay of 63 days. The delay of 63 days is not a delay for
a long period and there has been some explanation for
the delay. The High Court should have, before passing
the impugned judgment, considered the explanation for
B the delay along with the facts of the case, the position of
the parties, the nature of the litigation and the period of
delay. The High Court should also have considered that
it has been settled by a catena of cases that, unless the
delay is gross, an explanation for the same should be
C liberally construed. It appears that the High Court has not
been able to consider all these relevant facts in their
correct perspective before passing the impugned order.
[Para 15] [297-G-H; 298-A-B]

3. The order of the High Court is set aside and the
D delay is condoned. The appeal is directed to be restored
to its file. [Para 16] [298-C]

Case Law Reference:

(1891 AC 193) referred to Para 14
E CIVIL APPELLATE JURISDICTION : Civil Appeal No.
9059 of 2011.

From the Judgment & Order dated 01.12.2008 of the High
F Court of Punjab & Haryana at Chandigarh in Civil Revision No.
3745 of 2008.

M.K. Dua for the Appellant.

G Rajesh Tyagi, Dilip K. Sharma, Atishi Dipankar for the
Respondents.

The Judgment of the Court was delivered by

GANGULY, J. 1. Leave granted.

H 2. This civil appeal is directed against the order dated

01.12.2008 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No.3745/2008, whereby the High Court declined to interfere with the order dated 27.07.2007 of the District Judge, Ambala. By order dated 27.07.2007 the District Judge dismissed the application for condonation of delay of 63 days in filing the appeal against the judgment of the trial court in Civil Suit No. 23/2003. A B

3. The facts and circumstances, which are relevant to this appeal, are as under.

4. All the appellants no. 1 to 3 are sisters of Respondent no. 1, who is their brother. The father of the parties died on 17.01.2003 and the mother had predeceased the father. Eight daughters and one son survived their father. The father during his lifetime arranged the marriage of six daughters except the appellant no. 1 & 2 herein. C D

5. In the year 2003, the appellants brought a suit (CS no. 23 of 2003) before the Civil Judge, Ambala City for declaration of their title as 3/9th owner each, of the suit scheduled properties and for permanent injunction restraining the Respondent no.1 from interfering with their peaceful possession and creating any third party rights in the said properties. According to the appellants- plaintiffs, the suit schedule properties were their ancestral property in which plaintiffs have got right by birth and all of them have got equal shares in the same. E F

6. The Respondent no. 1 controverted the aforesaid averment of the appellants-plaintiffs by claiming that the suit schedule properties were not ancestral but were self-acquired by their deceased father. Further case of the Respondent No.1 is that he is the absolute owner of the said properties by virtue of a registered Will dated 18.06.2002 executed by the deceased father in his favour. G

7. On the pleadings of the parties, the Trial Court framed H

- A five issues. Thereafter the case was adjourned for evidence of the appellants- plaintiffs. Despite several opportunities, the appellants-plaintiffs allegedly led no evidence. Since there was no evidence of the plaintiffs on record, the Respondent no.1 defendant also did not lead any evidence.
- B 8. By order dated 01.12.2006 the Trial Court dismissed the suit filed by the appellants-plaintiffs with costs and accordingly a decree was drawn up.
- C 9. The appellants-plaintiffs challenged the aforesaid judgment and decree by filing an appeal before the District Judge, being Civil Appeal No.12 of 2007. The appellants-plaintiffs also filed an application for condonation of delay of 63 days in filing the appeal by offering an explanation which can be summarized as under:
- D "That the appellant no. 2 and 3 were married and illiterate. The appellant no.1 was pursuing the case in the court. During the pendency of the case, appellant no.1 fell ill and therefore requested the counsel to intimate to the appellants regarding the position of proceedings. The
- E counsel assured that he will inform the appellants as and when their presence is needed in the court. But the counsel never informed the appellants for giving their evidence in court, which resulted in the dismissal of the
- F case on 1.12.2006. On 26.02.2007, someone from the locality informed the appellants about the dismissal of the case. Thereafter the appellants rushed to the Court and applied for a certified copy of the judgment and then filed the appeal a little belatedly."
- G 10. By order dated 27.07.2007, as noted above, the District Judge dismissed the application for condonation of delay on the ground that the delay was not bona-fide and no reasonable cause has been made out to condone the delay.
- H 11. The reasoning of the District Judge for reaching the

above conclusion was that, (i) the appellants are neither illiterate nor rustic villagers as all of them had signed in English. (ii) During the course of proceedings before the trial court, the appellants were careless and negligent. A

12. Against this order the appellants preferred a revision before the High Court. B

13. By impugned order dated 01.12.2008 the High Court dismissed the revision petition upholding the order of the District Judge. The High Court expressed the view that the delay of 63 days in filing the appeal has not been properly explained. C

14. We cannot accept the view taken by the High Court in the impugned judgment. When a Court exercises its discretion in either condoning or refusing to condone delay in filing any proceeding, the Court acts in exercise of its discretion. Normally, this Court in exercise of its discretion under Article 136 of the Constitution may not interfere with the exercise of discretion by the High Court in such matters. However, there is no straitjacket about this. The discretion of this Court under Article 136 of the Constitution is meant to further the ends of justice and this Court has been using its discretion in appropriate cases when it is satisfied that exercise of jurisdiction by the High Court or other Tribunals has not been on sound judicial principles. It is well settled that judicial discretion shall always be exercised "according to the rules of reason and justice and not according to private opinion" [See *Sharpe Vs. Wakefield* (1891 AC 193)]. D
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15. In the facts of this case it is clear that of all the three ladies, who were the appellants, one of them was pursuing the case and she fell sick. Therefore, she was not in a position to pursue the legal remedy with due diligence as a result of which the appeal was filed with a delay of 63 days. The delay of 63 days is not a delay for a long period and there has been some explanation for the delay. The High Court should have, before passing the impugned judgment, considered the explanation for G
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- A the delay along with the facts of the case, the position of the parties, the nature of the litigation and the period of delay. The High Court should also have considered that it has been settled by a catena of cases that, unless the delay is gross, an explanation for the same should be liberally construed. It
- B appears that the High Court has not been able to consider all these relevant facts in their correct perspective before passing the impugned order.

C 16. We, therefore, are constrained to set aside the order of the High Court and condone the delay. We direct that the appeal should be restored to its file and the hearing of the appeal may proceed as expeditiously as possible.

D 17. However, nothing said in this judgment should be considered as expression of opinion on the merits of the controversy between the parties. The appeal is allowed. There will be no order as to costs.

B.B.B.

Appeal allowed.