

STATE OF RAJASTHAN & ANR.

v.

BAL KISHAN MATHUR (D) THROUGH LRS. & ORS.
(Civil Appeal No 8243 of 2013)

SEPTEMBER 16, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND
RANJAN GOGOI, JJ.]

Delay – Condonation of – Delay on part of the State in filing writ appeal before High Court – In the application for condonation of delay date of filing the appeal was inadvertently mentioned as 2.11.2006 instead of 8.11.2006 – Dismissal of the application on the ground that the delay of 6 days i.e. from 2.11.2006 to 8.11.2006 not explained – Held: It is not proper to terminate a proceeding on technical ground like limitation, where there is no gross negligence, or deliberate inaction or lack of bonafides – In the instant case, in view of the fact that error was occasioned by inadvertence and in view of period of delay, High Court ought to have condoned the delay – Matter remitted to High Court.

There was delay of 98 days in filing writ appeal before High Court, on behalf of the appellant-State. In the application for condonation of delay, date of filing the appeal was mentioned as 2.11.2006 while the actual date of filing was 8.11.2006. Division Bench of High Court refused to condone the delay on the ground that the State could not explain the delay of 6 days i.e. from 2.11.2006 to 8.11.2006. Hence the present appeal.

Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1. It is correct that condonation of delay cannot be a matter of course; it is also correct that in seeking such condonation, the State cannot claim any

A preferential or special treatment. However, in situation
 where there has been no gross negligence or deliberate
 inaction or lack of bonafides, a broad and liberal view
 needs to be taken so as to advance substantial justice
 instead of terminating a proceeding on a technical
 B ground like limitation. Unless the explanation furnished
 for the delay is wholly unacceptable or if no explanation
 whatsoever is offered or if the delay is inordinate and
 third party rights had become embedded during the
 interregnum, the Courts should lean in favour of
 C condonation. [Para 9] [141-E-G]

Postmaster General vs. Living Media India Ltd. (2012) 3
 SCC 563; 2012 (1) SCR 1045; *Amalendu Kumar Bera vs.*
State of West Bengal (2013) 4 SCC 52; 2013 (2) SCR 484 –
 referred to.

D 2. In the present case, the High Court seems to have
 accepted the explanation for the delay upto 02.11.2006.
 Thereafter, taking into account the statement made in the
 condonation application that the appeal has been filed on
 E 02.11.2006, whereas it was actually filed on 08.11.2006,
 the High Court refused to condone the delay of the period
 between the two dates i.e. six days. The mention of the
 date 2.11.2006 is an error occasioned by inadvertence.
 The inadvertence or even if the above act is construed
 F to be negligent, cannot be sufficient to justify a refusal
 of the adjudication of the appeal filed by the State on
 merits which is the ultimate consequence of the
 impugned order. Taking into account the totality of the
 facts of the case, particularly the period of the delay, the
 High Court should have condoned the delay. [Para 10]
 G [143-B-C, D-F]

Case Law Reference:

	2012 (1) SCR 1045	referred to	Para 9
H	2013 (2) SCR 484	referred to	Para 9

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8243 of 2013. A

From the Judgment & Order dated 12.11.2008 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Special Appeal No. 02033 of 2007.

Dr. Manish Singhvi, AAG, Amit Lubhaya, Milind Kumar for the Appellants. B

Shiv Sagar Tiwari for the Respondent.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted. C

2. Though the only issue that arises in this appeal is with regard to the correctness of the order dated 12.11.2008 passed by the Division Bench of the Rajasthan High Court declining to condone the delay that had occurred in the institution of Special Appeal Writ No.02033 of 2007 by the appellant, a brief conspectus of the relevant facts would be appropriate. D

3. An order of eviction dated 17.12.1980 under the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 was passed by the Estate Officer against the respondent (Now represented by his legal heirs). The respondent was unsuccessful in the challenge made against the said order in an appeal before the learned District Judge. Thereafter, the respondent filed an application for review which was transferred to the court of learned Additional District Judge who heard the matter and decided the same on 17.12.1993 as if he was hearing an appeal against the initial order of the Estate Officer dated 17.12.1980. The State of Rajasthan, therefore, moved Civil Writ Petition No.3503 of 1995 before the High Court which was dismissed by the learned Single Judge holding that the tenancy of the respondent could not be determined except by following the provisions of Sections 106 and 111 of the Transfer of Property Act, 1882, as already held in another connected case. E
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A 4. Aggrieved by the said order of the learned Single Judge
of the High Court dated 19.05.2006, D.B. Special Appeal Writ
No.02033 of 2007 was filed by the State on 08.11.2006. The
office reported a delay of 98 days in filing of the appeal.
Considering the explanation furnished by the State for the delay
B that had occurred, the Division Bench took note of the
statement made by the appellant in the condonation application
that the appeal was filed on 02.11.2006 whereas it was actually
filed on 08.11.2006. The Division Bench, therefore, thought it
proper to conclude that the period of six days between
C 02.11.2006 and 08.11.2006 had not been explained.
Accordingly, the delay in filing the D.B. Special Appeal Writ
was not condoned. Resultantly, the appeal was dismissed.
Aggrieved, the State has filed the present appeal.

D 5. We have heard Dr. Manish Singhvi, learned Additional
Advocate General of Rajasthan for the appellant and Shri Shiv
Sagar Tiwari, learned counsel for the respondent.

E 6. Learned counsel appearing for the appellant has urged
that mention of the date 2.11.2006 as the date of filing of the
appeal was inadvertent. Alternatively, it is contended that even
if it is assumed that the State had failed to offer any explanation
for filing the appeal on 08.11.2006 after making a statement
that the same was filed on 02.11.2006, the period of six days'
is too insignificant to justify the view taken by the High Court.
F Learned counsel has also tried to take us to the merits of the
appeal filed by the State to show that the order of the learned
Single Judge under challenge in the appeal is *ex-facie* incorrect
being contrary to several pronouncements of this Court. It is,
therefore, urged that the impugned order would justify
G interference so as to ensure that the Appeal filed by the State
is heard on merits.

H 7. On the other hand, learned counsel appearing for the
respondent has submitted that the learned Single Judge while
passing the order dated 19.05.2006 in the Civil Writ Petition
No.3503 of 1995 had exercised jurisdiction under Article 227

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of the Constitution. Under the provisions of the Rajasthan High Court Ordinance 1949 and the Rules framed thereunder providing for intra court appeals, appeals are not contemplated against orders passed by a learned Single Judge in exercise of jurisdiction under Article 227. On the aforesaid basis it is submitted that the D.B. Special Appeal filed by the State before the High Court was not maintainable. The initial order of the learned Single Judge dated 19.05.2006 not being subject to any challenge in the present appeal before this Court, no interference is called for.

8. Having considered the rival submissions advanced on behalf of the parties, we deem it necessary to make it clear that in the present appeal we would not in any way be concerned with the merits of the dispute between the parties. As already observed by us in the earlier part of this order it is only the question of condonation of delay in filing the D.B. Special Appeal that would require our consideration. The facts in this regard have already been noticed.

9. It is correct that condonation of delay cannot be a matter of course; it is also correct that in seeking such condonation the State cannot claim any preferential or special treatment. However, in situation where there has been no gross negligence or deliberate inaction or lack of bonafides this Court has always taken a broad and liberal view so as to advance substantial justice instead of terminating a proceeding on a technical ground like limitation. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third party rights had become embedded during the interregnum the Courts should lean in favour of condonation. Our observations in *Postmaster General v. Living Media India Ltd.*¹ and *Amalendu Kumar Bera v. State of West Bengal*² do not strike any discordant note and have to be understood in the context of facts of the respective cases.

1. (2012) 3 SCC 563.

2. (2013) 4 SCC 52.

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A *Postmaster General v. Living Media India Ltd. (supra)*

"28. 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 bona fides, 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.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

Amalendu Kumar Bera v. State of West Bengal (supra)

"10. ... True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there are serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file

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objection under Section 47 till the decree-holder puts the
decree in execution. ... Merely because the respondent is
the State, delay in filing the appeal or revision cannot and
shall not be mechanically considered and in the absence
of "sufficient cause" delay shall not be condoned."

10. In the present case, the High Court seems to have
accepted the explanation for the delay upto 02.11.2006.
Thereafter, taking into account the statement made in the
condonation application that the appeal has been filed on
02.11.2006, whereas it was actually filed on 08.11.2006, the
High Court refused to condone the delay of the period between
the two dates i.e. six days. Reading the relevant paragraph of
the condonation application it is obvious to us that there is an
apparent error or mix up in the dates furnished by the State in
its application for condonation of delay. The mention of the date
2.11.2006 in para 5 of the condonation application is by hand.
Obviously it is an error occasioned by inadvertence. The date
that should have been mentioned is 8.11.2006 and not
2.11.2006. The inadvertence or even if the above act is
construed to be negligent, in our considered view, cannot be
sufficient to justify a refusal of the adjudication of the appeal
filed by the State on merits which is the ultimate consequence
of the impugned order. Taking into account the totality of the
facts of the case, particularly the period of the delay, we are of
the view that in the present case, the High Court should have
condoned the delay. The same not having been done we deem
it appropriate to allow the appeal and set aside the order dated
12.11.2008 passed by the Division Bench of the High Court;
condone the delay that had occurred in filing of D.B. Special
Appeal Writ No.02033 of 2007 and remit the matter back to
the High Court for disposal on merits. We make it clear that
we have not expressed any opinion on the merits of the case
of the parties before us.

K.K.T. Appeal allowed & Matter remitted to High Court.