

Girja Shankar And Another vs Commissioner, Devi Patan Mandal, Gonda ... on 31 January, 2025

Author: Jaspreet Singh

Bench: Jaspreet Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6749

Court No. - 8

Case :- WRIT - C No. - 880 of 2025

Petitioner :- Girja Shankar And Another

Respondent :- Commissioner, Devi Patan Mandal, Gonda And Others

Counsel for Petitioner :- Faiz Ahmad Khan

Counsel for Respondent :- C.S.C.,Pankaj Gupta

Hon'ble Jaspreet Singh,J.

Heard learned counsel for the petitioners and the learned standing counsel for the State-respondents.

By means of the instant petition, the petitioners assail the order dated 22.04.2024 passed by the respondent No.1, whereby an application under Section 5 of the Limitation Act, 1963 (for short, 'the Act of 1963') which was accompanied by an application for recall purported to be under Order IX Rule 9 CPC was rejected on the ground of limitation. Consequently, the application itself has also been dismissed.

The submission of the learned counsel for the petitioners is that initially a suit for partition was instituted between Alakhram (the predecessor of the petitioners) and Ram Bahadur. The said suit was partly decreed for certain khata, but insofar as Khata No.172 is concerned, it was dismissed by means of the judgment dated 13.11.1963. It is further urged that the said order was not assailed by any of the parties to the said suit and it attained finality.

Almost after three decades, Shri Alakhram instituted another suit for declaration under Section 229-B of the U.P. Z.A. & L. R. Act, 1950 impleading the sons of Ram Bahadur namely Ram Rang and Ram Kailash, who have also now passed away and are represented by their legal heirs, who are the private-respondents No.4 to 8 in the instant petition.

It is urged that the said suit of Alakhram instituted on 16.10.1996 came to be dismissed for want of prosecution on 11.04.2013.

On 29.05.2023, almost after ten years from the dismissal of the suit, the present petitioners moved an application seeking to recall of the order dated 11.04.2013 and also moved a separate application under Section 5 of the Act of 1963.

In the said application under Section 5 of the Act of 1963, it was stated that Alakhram prior to his death was suffering from illness and he was also not conscious, however, he passed away on 11.04.2013 and on the same very day itself, the suit filed by him was also dismissed for want of prosecution.

It was further stated that there was some animosity between Babadeen (son of Alakhram), hence, despite the passing away of Alakhram, his son namely Babadeen did not take any measure insofar as the suit is concerned as it is alleged that Babadeen had no knowledge of the proceedings. Babadeen also expired on 23.12.2022 and it is thereafter on 10.05.2023, the present petitioners became aware that their grandfather namely Alakhram had initiated certain proceedings which came to be dismissed on 11.04.2013, hence, after making the necessary inquiries, the formal applications seeking recall of the order dated 11.04.2013 along with an application under Section 5 of the Act of 1963 was moved on 29.05.2023.

This came to be contested and the Additional Commissioner while passing the impugned order dated 31.01.2024 found that the reasons as given in the application seeking condonation of delay was not properly explained as it did not indicate the bonafide. This was further assailed in a revision which also did not find favour with the revisional Court and being aggrieved, the petitioners are before this Court.

It is urged that the Courts should have taken a liberal view of the matter and it has been categorically held that so far as possible, the matter should be decided on merits and technicalities should be avoided.

Having considered the aforesaid submissions and from a perusal of the material on record, this Court finds that there was nothing substantial indicated in the application under Section 5 of the Act

of 1963 to buttress the cause sought to be projected in the application for condonation of delay. It is also to be noticed that it is no doubt true that the limitation should be considered liberally where the cause shown is explained. It is not the length of delay which is material rather it is sufficiency of the cause which is to be looked into. Even a short delay may not be condoned, if the cause is not sufficiently explained whereas long delay can also be condoned provided it has been adequately explained.

In the instant case, vague averments have been made especially where the delay is of about ten years.

This Court is reminded of the latest decision of the Apex Court in the case of H. Guruswamy & Ors. v. A. Krishnaiah, 2025 SCC OnLine SC 54, wherein the Apex Court has reiterated and re-visited the principles upon which an application for condonation of delay is to be tested in Paras 13 to 17 reads as under:-

"13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating alisbetween the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

Having considered the aforesaid submissions made in the application for condonation of delay and applying the principles of law laid down by the Apex Court in H. Guruswamy (supra), this Court finds that the delay has not been adequately explained. The reasons given by the Additional Commissioner in the revision as well as by the Sub-Divisional Magistrate while passing the impugned order does not suffer from palpable error which may persuade this Court to entertain the instant petition which is accordingly dismissed.

Order Date :- 31.1.2025 Rakesh/-