

Rajneesh Kumar & Anr.

v.

Ved Prakash

(S.L.P. (Civil) No(s). 935-936 of 2021)

21 November 2024

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Whether the litigant can be permitted to throw the entire blame on the head of the advocate for the delay in preferring appeal.

Headnotes[†]

Delay – Condonation of delay – The petitioners-plaintiffs herein were dissatisfied with the *ex parte* order passed in the counter claim and challenged the same before the first appellate court by way of an appeal – However, the appeal was time barred by 534 days – First Appellate Court condoned the delay of 534 days in preferring appeal on the ground that the litigant should not suffer on account of negligence on the part of the advocate – Respondent-defendant challenged the same before the High Court – The High Court quashed and set aside the order passed by the Appellate Court condoning delay of 534 days:

Held: The entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court – This Court has noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court – Even if it is assumed for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance – The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief – There is no error of law in the impugned judgment of the High Court warranting interference. [Paras 10, 13]

Rajneesh Kumar & Anr. v. Ved Prakash**Case Law Cited**

Salil Dutta v. T.M. & M.C. Private Ltd [1993] 1 SCR 794 : (1993) 2 SCC 185; *Bharat Barrel & Drum MFG Go. v. The Employees State Insurance Corporation* [1972] 1 SCR 867 : (1971) 2 SCC 860 – relied on.

List of Keywords

Delay; Condonation of delay; Appeal time barred; Negligence of advocate; Litigant.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION: S.L.P. (Civil) No(s). 935-936 of 2021

From the Judgment and Order dated 09.12.2019 and 10.07.2020 of the High Court of Himachal Pradesh at Shimla in CR No. 96 of 2019 and RP No. 5 of 2020, respectively.

Appearances for Parties

Aditya Dhawan, Mrs. Kiran Dhawan, Chander Shekhar Ashri, Advs. for the Petitioners.

Rajesh Gupta, Mrs. Harpreet Singh, Sumit R. Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Order**

1. Special Leave Petition (Civil) No. 935 of 2021 arises from the order passed by the High Court of Himachal Pradesh dated 09.12.2019 in the Civil Revision Application No. 96 of 2019 by which the High Court allowed the Civil Revision Application filed by the original defendant/counter claimant and thereby quashed and set aside the order passed by the District Judge, Shimla condoning the delay of more than 534 days in filing the appeal by the petitioners herein (original plaintiffs).
2. Special Leave Petition (Civil) No. 936 of 2021 arises from the order passed by the High Court in Review Petition No. 5 of 2020 dated 10.07.2020 by which the High Court rejected the review application.

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3. It appears from the materials on record that the petitioners herein (original plaintiffs) filed a civil suit against the respondent (defendant). The respondent herein had filed counter claim in the said suit. The civil suit came to be dismissed for default and the application for restoration moved by the petitioners herein was also ordered to be dismissed for default. The counter claim of the respondent was allowed vide the judgment and decree dated 17.01.2015 passed in the very same suit.
4. The petitioners herein being dissatisfied with the *ex parte* order passed in the counter claim challenged the same before the first appellate court by way of an appeal. However, the appeal was time barred by 534 days.
5. The first appellate court condoned the delay of 534 days in preferring the appeal essentially on the ground that the litigant should not suffer on account of negligence on the part of the advocate and the court should adopt a liberal approach in condoning the delay.
6. The respondent herein being dissatisfied by the order passed by the first appellate court condoning the delay challenged the same before the High Court. The High Court allowed the civil revision application by which the order passed by the appellate court condoning the delay of 534 days came to be quashed and set aside.
7. In such circumstances, the petitioners are here before this Court with the present petitions.
8. We have heard the learned counsel appearing for the parties.
9. The High Court in its impugned order observed as under:-

"14. Thus, it is evidently clear that the respondents were not only fully aware of the pendency of the counter-claim on 22.3.2012, yet this fact has been deliberately and willfully concealed and not stated in the application for restoration. In fact the entire blame has been put on the earlier counsel that had been representing them.

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22. Since the respondents had not approached the Court with clean hands and have rather suppressed. the material facts, that too, deliberately and intentionally regarding knowledge of pendency of the counter-claim atleast on

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22.03.2012 and thereby tried to gain an unfair advantage from the Court, that too, by casting serious allegations on the previous counsel(s), no indulgence much less discretion could have been exercised in favour of the respondents/ plaintiffs, that too, for condoning the delay of more than 534 days."

10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.
11. In the aforesaid context, we may refer to a decision of this Court in the case of Salil Dutta v. T.M. & M.C. Private Ltd. reported in (1993) 2 SCC 185, wherein this Court observed as under:-

"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where

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the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. Maybe not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.”

(Emphasis supplied)

12. As regards the law of limitation, we may refer to the decision of this Court in ***Bharat Barrel & Drum MFG Go. v. The Employees State Insurance Corporation*** (1971) 2 SCC 860, wherein this Court held as under:-

“The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura sub-veniunt (the laws give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims.”

(Emphasis supplied)

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13. In view of the aforesaid, we find no error not to speak of any error of law in the impugned judgment of the High Court warranting interference in exercise of our jurisdiction under Article 136 of the Constitution of India.
14. In the result, these petitions fail and are dismissed.
15. Pending application(s), if any, stand disposed of.

Result of the case: Petitions dismissed.

[†]*Headnotes prepared by:* Ankit Gyan