

SC-Unless mala fides are writ large, delay should be condoned. Matters should be disposed of on merits and not technicalities

Improvement Trust vs. Ujagar Singh (Supreme Court)

**REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 2395 OF 2008
IMPROVEMENT TRUST, LUDHIANA.. APPELLANT (S)
VERSUS
UJAGAR SINGH & ORS. .. RESPONDENT (S)
WITH
CIVIL
APPEAL
NOS.
2397 OF
2008
ORDER**

1 Heard counsel on either side at length. Records perused.

2 Even though both sides had cited several decisions of this Court on the scope and application of Section 5 of the Limitation Act, but it is neither necessary nor required to deal with those cases in the peculiar facts and circumstances of this case.

3 Land belonging to Respondent Nos. 1 to 4 was acquired by the appellant Improvement Trust, Ludhiana, for development scheme popularly known as “550 Acres Scheme”. Reference Court had passed the Award and fixed the amount of compensation at rupees 4,27,068.20 paise together with interest at the rate of 9% per annum from the date of the issuance of the notification in favour of Respondent Nos. 1 to 4. The appellant did not deposit the amount. Respondent Nos. 1 to 4 had to approach the Executing Court for recovery of the amount awarded. The property described as Khewat No.867 Khautani No.971 Khasra No.272 admeasuring 7K-18M entered in jamabandi for the year 1988-89 in village Jabaddi No.160 Tehsil and District

1 Ludhiana was attached for realisation of the decretal amount. Later a notice under Order 21 Rule 66 of the Code of Civil Procedure (hereinafter shall be referred to as `C.P.C.`) was stated to have been issued to the appellant. However, despite service of notice, none appeared on behalf of the appellant /judgment debtor.

2 The property was put to an auction sale on 12/8/1992. Respondent No. 5 herein, M/s. Jagan Singh and Company (hereinafter shall be referred to as `the Company`) offered Rs.22,65,000/-, and thus was declared as the highest bidder. Sale was knocked down in its favour, and later confirmed in its favour.

3 The appellant then woke up from its slumber and filed objections under Order 21 Rule 90 CPC raising various grounds. Executing Court then framed issues, reproduced by the learned Single Judge in the impugned order. The case was thereafter fixed for recording of the evidence of

4 judgment-debtor on 19/3/1993, 17/4/1993, 8/5/1993 and 29/5/1993. However, on the aforesaid dates none appeared on behalf of the appellant. Consequently, the evidence of appellant/judgment debtor was closed. As a necessary consequence thereof appellant's objections came to be dismissed in default due to nonappearance.

5 Mr. P.K. Jain, Advocate used to appear for the appellant Trust, but did not appear on the above mentioned dates. The order-sheet dated 29/5/1993 reproduced in the impugned order passed by the learned Single Judge reflected the same. Case was posted for confirmation of sale on 5/6/1993, again there was no appearance and the sale was confirmed in favour of respondent No.5. It is reported pursuant thereto sale deed was executed in its favour

11 through court. Out of the bid amount of Rs.22, 65,000/- the awarded amount due to respondents 1 to 4 was released, and remaining is lying in deposit with the Executing Court.

12 The appellant thereafter filed miscellaneous appeal before the District Judge, Ludhiana, challenging the correctness propriety and validity of the orders passed on 29/5/1993 and 5/6/1993, made over to Additional District Judge, Ludhiana. Said appeal was barred by limitation by two months and few days, exact delay has not been reflected in

13 any of the orders. But after going through the files it appears that delay was for about two months and few days. An application under Section 5 of the Limitation Act was filed to condone delay but was dismissed by the Appellate Court stating therein that no good and sufficient grounds were shown for condonation of delay. Consequently the appeal was also dismissed.

14 Thereafter, appellant under some mistaken advice filed execution second appeal in the High Court of Punjab and Haryana at Chandigarh registered as Execution Second Appeal No. 820 of 1994. On objections being raised with regard to its maintainability, in the light of the specific bar created under Section 104 of the CPC, learned Single Judge converted the appeal into civil revision and proceeded to decide as such.

15 Respondent No.5 contended that no error was committed by the Executing Court in dismissing the appellant's application for setting aside the sale. Similarly the first Appellate Court also committed no error in dismissing the Appellant's appeal as no good and sufficient cause were shown for condoning delay. The objections raised by respondent No.5 found favour by the

2 learned Single Judge of the High Court and the appeal/revision of the appellant was dismissed on 9/5/2003. In the light of the aforesaid orders the objections preferred by appellant herein purportedly filed under Order 21 Rule 90 of the CPC met with the fate of dismissal. Appellant also filed an application for review of the order dated 9/5/2003 passed by High Court under Order 47 Rule 1 of the CPC but was also dismissed on 8/7/2004, against which C.A. No. 2395/2008 has been filed before this Court. Since parties are same and common issues arise for consideration they are heard analogously and disposed of by a common order.

3 Learned senior counsel appearing for appellant Mr. Salil Sagar with Mr. Arun K. Sinha, contended that appellant had been contesting the matter in right earnest right from the very beginning and had implicit faith and confidence in his Advocate Mr. P.K. Jain, who had been appearing for the appellant not only in this case but in several other cases. According to him there was no reason to doubt that he would not appear on various dates of hearing and then would not even inform the appellant about the progress of the case. In other words, it has been contended that whatever best was possible to be done by the appellant that had been done, therefore even though there has been some delay, on account of non-communication of the passing of the impugned order challenged in appeal, delay should have been condoned and the matter should not have been thrown at the threshold. To show its bonafides various order-sheets passed by Trial Court and the Executing Court have been brought to our notice. The envelop maintained by Mr. P.K.Jain, Advocate, for keeping the brief, has been filed to show that dates of hearing were mentioned therein.

1 On the other hand, Mr. Vijay Hansaria, learned senior counsel appearing for respondent No.5, with his polite yet usual vehemence submitted that list of dates as filed by the Company would show and reveal the callous and negligent attitude of the appellant or its Advocate, therefore no indulgence should be shown to it. It was contended that the indifferent attitude of the appellant in prosecuting the matter had not come to an end and Appellant had learnt no lessons from its previous defaults.

2 Even though appeal was dismissed by First Appellate Court on the ground of delay, stood confirmed by the High Court but even the Special Leave Petition was delayed by 258 days in refiling there was further delay of 90 days. No doubt it is true that this Court after considering the appellant's application was pleased to condone delay and leave was granted. But this has been argued by Mr. Vijay Hansaria to show the conduct, behaviour and attitude of the appellant in prosecuting the matter.

3 Be that as it may, we are of the opinion that the delay in filing the first appeal before District Judge, Ludhiana, for setting aside the sale has not been so huge warranting its dismissal on such hypertechnical ground. In fact, according to us, appellant had taken all possible steps to prosecute the matter within time.

Had there been an intimation sent to the appellant by Mr. P.K. Jain, its erstwhile Advocate, and if even thereafter appellant had acted callously then we could have understood the negligent attitude of the appellant but that was not the case here. No sooner the appellant came to know about the dismissal of its objection filed before the Executing

1 Court, under Order 21 Rule 90 of the CPC it made enquiries and filed the appeal. While considering the application for condonation of delay no straight jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not.

Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct behaviour and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter. Even though Mr. Vijay Hansaria appearing for the respondent No.5 has argued the matter at length and tried his best to persuade us to come to the conclusion that no sufficient grounds made out to interfere with the concurrent findings of facts but we are afraid, we are not satisfied with the line of arguments so adopted by the counsel for respondent No.5 and cannot subscribe to the same.

2 After all, justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at the threshold. Both sides had tried to argue the matter on merits but we refrain ourselves from touching the merits of the matter as that can best be done by the Executing Court which had denied an opportunity to the appellant to lead evidence and to prove the issues so formulated.

3 In our opinion, ends of justice would be met by setting aside the impugned orders and matter is remitted to the Executing Court to consider and dispose of appellant's objections filed under Order 21 Rule 90 of CPC on merits and in accordance with law, at an early date. It is pertinent to point out that unless malafides are writ large on the conduct of the party, generally as a normal

1 rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities.

2 Apart from the above, appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation. It is also worth noticing that delay was also not that huge, which could not have been condoned, without putting the respondents to harm or prejudice. It is the duty of the Court to see to it that justice should be done between the parties.

3 For the aforesaid reasons the impugned orders passed by Appellate Court, and order passed by the High Court, are hereby set aside and quashed. As a consequence, the matter stands remitted to the Executing Court for deciding the appellant's application filed under Order

21 Rule 90 of CPC at an early date on merits. Since there are only two contesting parties to the litigation that is to say the appellant and respondent No.5, both would appear before the Executing Court on 20/7/2010.

Being an old case an endeavour would be made by the Executing Court to take up the case as far as possible, on day-to-day basis and no party would seek an undue adjournment in the matter. We make it clear that we have expressed no opinion, on the merits of the matter and any observation made herein would not be construed as an expression of opinion on merits.

4 We are conscious of the fact that respondent No.5 has been put to inconvenience and harassment as admittedly it had deposited a huge amount of Rs.22, 65,000/- in the year 1992 but has not been able to get any fruits thereof till date. Therefore the appellant's appeal is allowed subject

1 to payment of Rs.50, 000/- (Rupees fifty thousand) to respondent No.5 within three weeks hereof. Payment of cost is condition precedent, without which the appellant would not be allowed to prosecute its objections. The appeal therefore stands allowed to the aforesaid extent. The appellant to bear the cost through out. In the light of this order, other civil appeal No. 2397/2008 stands allowed to the aforesaid extent only

**.....J.
(DEEPAK VERMA)**

**.....J.
(K.S. RADHAKRISHNAN)**

**New Delhi,
June 9, 2010.**