

[2009] 1 S.C.R. 301

R.B. RAMLINGAM

v.

R.B. BHUVANESWARI
(S.L.P. (C) 5052-53 of 2009)

JANUARY 13, 2009

[S.H. KAPADIA AND H.L. DATTU, JJ.]

CONSTITUTION OF INDIA, 1950:

Article 136 – Petition for special leave to appeal – Delay in filing – Cause shown as pendency of review petition before High Court – HELD: In exercise of discretion under Article 136 to decide whether delay should be condoned or not, Court is not bound by considerations applicable to an appellate court but nonetheless general principles which would weigh with appellate court in determining sufficient cause can be guiding factors – Therefore, it cannot be stated as a proposition per se that prosecution of review proceedings would not be a sufficient cause at all for purposes of s.5 of the Limitation Act – Limitation Act, 1963 – s.5.

Kunhayammed and Ors. v. State of Kerala an Anr. 2000 Suppl. (1) SCR 538 = (2000) 6 SCC 359, relied on.

Case Law Reference:

2000 Suppl. (1) SCR 538 relied on para 3

CIVIL APPELLATE JURISDICTION : S.L.P. (C) 5052-53 of 2009.

From the Judgment and Order dated 18/9/2006 and 27/3/2008 of the High Court of Judicature at Madras in C.R.P. (NPD) No. 896 of 2006 and Review Application No. 85 of 2007 in C.R.P. (NPD) No. 896 of 2006 respectively.

S. Gurukrishna Kumar and S.R. Setia, for the Appellant.

A Shyam Diwan, (A.C.), for the Respondent.

The following Order of the Court was delivered :

ORDER

B 1. The present special leave petition has been filed by the
petitioner (original plaintiff) against the judgment and final Order
dated 18.9.2006 passed by the Madras High Court in
CRP(NPD) No. 896/06. Subsequent to the passing of the
impugned Order dated 18.9.2006 in CRP No. 896/06, the
C petitioner herein filed Review Application No. 85/07. This
application was filed in time prescribed for filing the Review
Petition under the Limitation Act, 1963. However, vide Order
dated 27.3.2008 the said Review Application No. 85/07 stood
rejected. This special leave petition is filed against the main
D judgment and final Order dated 18.9.2006 in CRP No. 896/06
on 7.7.2008. In the process, there is a delay of 568 days in filing
the special leave petition against the main judgment and order
dated 18.9.2006. The delay, therefore, in filing this special leave
petition was on account of pendency of Review Application No.
E 85/07 before the Madras High Court. Consequently, vide I.A.
No. 1 of 2008, the petitioner herein prays for condonation of
delay of 568 days in filing this SLP against the main judgment
and final Order dated 18.9.2006.

2. When this special leave petition came for hearing
F before the earlier Division Bench on 25.11.2008, a query was
raised by the Court as to whether prosecution of Review
Proceedings would be sufficient cause for purposes of Section
5 of the Limitation Act, 1963. This query was raised by the Court
because in numerous matters, this Court finds enormous delay
G in the filing of special leave petitions on the ground that the
petitioner has been prosecuting review proceedings on which
count there was delay in filing the special leave petition. There
is one more reason why this Court raised the above query.
There is divergence of opinion among Courts whether the
H prosecution of Review Proceedings would be sufficient cause

at all for purposes of Section 5 of the Limitation Act, 1963. For this purpose we requested Shri Shyam Diwan, learned senior counsel, to assist us in answering the query raised hereinabove. A

3. On the question as to whether the prosecution of a Review Application would be a sufficient cause for not filing the special leave petition in time for the purposes of Section 5 of the Limitation Act, 1963 we are of the view that there is a dichotomy between the appellate jurisdiction of this Court and discretionary jurisdiction under Article 136 of the Constitution (See: *Kunhayammed and Ors. v. State of Kerala and Anr.* reported in (2000) 6 SCC 359). Reading the said judgment, it also becomes clear that filing of Review Petition is no impediment to the filing of the special leave petition. Large number of judgments were cited before us by learned counsel. It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of Limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such. B
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4. For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition. In exercise of discretion under Article 136 to decide whether delay should be condoned or not, this Court is not bound by considerations applicable to G
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- A an Appellate Court but nonetheless general principles which would weigh with the Appellate Court in determining sufficient cause can be the guiding factor/guideline. Therefore, it cannot be stated as a proposition per se that the prosecution of Review Proceedings would not be a sufficient cause at all for purposes of Section 5 of the Limitation Act, 1963.

5. In the present case, as stated above, what is challenged is the main judgment and Order dated 18.9.2006. As stated above, I.A. No. 1 of 2008 is for condonation of delay in filing the special leave petition. It is important to note that the Review Application was filed within time in April, 2007, therefore, it was duly numbered. The High Court re-examined the entire case after issuing notice to the respondent herein (defendant).

6. In view of what is stated above, we now direct the office to list the present matter for admission along with I.A. No. 1 of 2008 on 16.2.2009.

7. We hereby record our appreciation for the assistance rendered by learned *Amicus Curiae*, Shri Shyam Diwan.

E R.P.

Appeal adjourned.