

2011 C L C 629

[Lahore]

Before Nasir Saeed Sheikh, J

GHULAM through L.Rs. and 8 others----Petitioners

Versus

PEHILWAN and 3 others----Respondents

Civil Miscellaneous Nos.1/C and 2/C of 2007 in Civil Revision No.303 of 2004, decided on 15th September, 2010.

(a) Limitation Act (IX of 1908)---

---S. 5---Civil Procedure Code (V of 1908), Ss.115 & 151---Application before High Court for restoration of revision petition dismissed for non-prosecution along with application for condonation of delay under S. 5 of the Limitation Act, 1908---Contention of the applicants was that no notice of transfer of case was given to the applicants or their counsel from Circuit Bench to principal seat; therefore, application was moved after two years nine months and 10 days delay---Validity---Matters from Circuit Bench were transferred to the principal seat vide notification issued in the year 2003 and the applicant's counsel appeared before High Court on 9-3-2004 after transfer of the case; he had the knowledge that the case stood transferred---On subsequent dates of hearing the counsel sent written request for adjournment and on 8-7-2004 the said counsel did appear before High Court at the principal seat; however, on the next date of hearing on 30-7-2004 a request for adjournment was sent---Record revealed that on 19-11-2004 revision petition was fixed for hearing and card was issued to the counsel for the applicants vide note dated 2-11-2004 for the date 19-11-2004---No affidavit was submitted by the applicants' counsel that he did not receive the card issued by the office for 19-11-2004---Contents of application for condonation of delay did not explain the delay of each and every day---Application filed under S.5 of the Limitation Act, 1908 was not maintainable---Restoration application along with condonation of delay application was dismissed by High Court in circumstances.

Muhammad Sadiq v. Mst. Bashiran and 9 others PLD 2000 SC 820; Said Ali v. Safdar Ali and others 2004 SCMR 387 and Allah Bachai and others v. Fida Hussain and others 2004 SCMR 615 ref.

Allah Dino and another v. Muhammad Shah and others 2001 SCMR 286 rel.

(b) Limitation Act (IX of 1908)---

---S. 5---Civil Procedure Code (V of 1908), S.115---Revision---Limitation---Provisions of S.5 of Limitation Act did not apply for condonation of delay of civil revision.

Allah Dino and another v. Muhammad Shah and others 2001 SCMR 286 rel.

Muhammad Ramzan Chaudhry for Applicants.

Muhammad Siddique Kamyana for Respondents.

ORDER

NASIR SAEED SHEIKH, J.--- The petitioners instituted Civil Revision No.303 of 2004 against concurrent judgments and decrees passed by the two courts below against them. This civil revision was previously for hearing before the Multan Bench of this Court and was subsequently transferred to the Principal Seat at Lahore. The civil revision was fixed on 19-11-2004 when nobody appeared on behalf of the petitioner and it was dismissed for non prosecution. C.M. No.1-C of 2007 for its restoration along with C.M. No.2-C of 2007 has been moved under section 5 of the Limitation Act for condonation of delay.

2. It is contended by the learned counsel for the petitioners that the counsel who was engaged by the petitioner "Syed Kabir Mahmood" was practising at Multan and no notice of the transfer of the case was given to the petitioner or their counsel about transfer of the case from Multan Bench to the Principal Seat, therefore, this C.M. No.1-C of 2007 was moved after two years nine months and 10 days delay. It is next argued by the learned counsel for the petitioners while relying on judgment reported as Muhammad Sadiq v. Mst. Bashiran and 9 others PLD 2000 SC 820 that Civil Revision once admitted to hearing cannot be dismissed for non prosecution.

3. The contentions of the learned counsel for the petitioners were controverted by the learned counsel for the respondents by contending that the case was transferred from Multan Bench through Notification dated 26-12-2003 copy of which has been placed with the reply of the C.M. No.1-C of 2007. It is next contended that on 9-3-2004 the learned counsel for the petitioners Syed Kabir Mahmood appeared before the Court at Lahore. On 31-3-2004 there was written request for adjournment and again on 12-5-2004 the learned counsel for the petitioners sent a written request for adjournment and the case was adjourned on 8-7-2004, the case was fixed and the learned counsel for the petitioner appeared before this Court. On 30-7-2004 the next date fixed for hearing, the learned counsel for the petitioners sent a request for adjournment and ultimately on 19-11-2004 this civil revision was dismissed for non-prosecution while counsel for the respondents was in attendance on the said date.

4. It is next contended by the learned counsel for the respondents that the judgment reported as Muhammad Sadiq v. Mst. Bashiran and 9 others PLD 2000 SC 820 has been considered in the subsequent judgment reported as Said Ali v. Safdar Ali and others 2004 SCMR 387 and has been distinguished. The learned counsel for the respondents has further relied upon the judgment reported as Allah Bachai and others v. Fida Hussain and others 2004 SCMR 615 to contend that

even provisions of section 151, C.P.C. cannot be invoked for condonation of delay by such a petitioner whose civil revision has been dismissed.

5. I have considered the arguments of the learned counsel for the parties and have perused the record with their assistance.

6. The matters from Multan Bench were transferred to the Principal Seat vide, Notification dated 26-12-2003 and the petitioner's learned counsel Syed Kabir Mahmood appeared before this Court on 9-3-2004 after the transfer of the case thus he had the knowledge that the case stood transferred. On the subsequent dates of hearing i.e. 31-3-2004 and 12-5-2004, he sent written request for adjournment and on 8-7-2004 the said learned counsel did appear before this Court at the Principal Seat. On the next date of hearing on 30-7-2004 a request for adjournment was sent. It is a matter of record that on 19-11-2004 Civil Revision No.303 of 2004 was fixed for hearing and the office record further shows that P.C. card was issued to the learned counsel for the petitioners vide note dated 2-11-2004 for the date 19-11-2004. There is no affidavit submitted by the petitioner's counsel Syed Kabir Mahmood that he did not receive the P.C. card issued by the office for the date 19-11-2004. The petitioner who seeks restoration of the civil revision dismissed for non prosecution moved the application for restoration after a considerable delay; he has to explain delay of each and every day. The instant C.M. No.1-C of 2007 was moved after two years nine months and ten days. The contents of the C.M. No.2-C of 2007 do not explain the delay of each and every day. In view of the law laid down by the honourable Supreme Court of Pakistan in the reported judgments Allah Dino and another v. Muhammad Shah and others 2001 SCMR 286 that provisions of section 5 of Limitation Act do not apply for condonation of delay of civil revisions, therefore, the petitioners cannot be allowed to seek condonation of delay under section 5 of Limitation Act. The contents of the C.M. No.2-C of 2007 do not make out sufficient cause for explaining the delay for each and every day. The civil revision was dismissed for non prosecution after the knowledge of the petitioners and their learned counsel that the case has been transferred to the Principal Seat and learned counsel for the petitioners has been appearing before this Court. In the absence of any affidavit from the learned counsel for the petitioners and due to the fact that there is a note that P.C. card was issued for the date 19-11-2004 for the appearance of the learned counsel for the petitioner, the petitioners have not made out any sufficient cause explaining the delay in moving the application for restoration of the Civil Revision. The C.M.No.2-C of 2007 moved under section 5 of the Limitation Act is not maintainable in view of the case-law reported as above. The C.M.No.2-C of 2007 is dismissed. In view of the dismissal of C.M.No.2-C of 2007 the C.M.No.1-C of 2007 is also dismissed accordingly.

M.U.Y./G-70/L

Petitions dismissed.