1971 KHC 319
Kerala High Court
V. R. Krishna Iyer, J.
State of Kerala v. Krishna Kurup Madhava Kurup
C. M. P. No. 9813 of 1969 in A. S. No. 356 of 1969
3 February, 1970

Code of Civil Procedure, 1908, O.7 R.10 - Limitation -- Return of plaint or memo of appeal by District Court for want of jurisdiction -- Order granting extra period for representation in proper Court by District Court -- It is not open to a Court, when it returns a plaint on the grounds mentioned in S.14 of the Limitation Act, to give a further time to the plaintiff to represent in the proper Court -- But appeal represented on legal advice during extended period only Legal advice sought and given honestly constitutes 'sufficient cause' for delay under Limitation Act, S.5 -- Further as party was entitled to assume Court's order was valid and Court's act should not be allowed to harm party, delay should be condoned. (Para 3, 6, 7)

Limitation Act, 1963, S.14 - 'In good faith' -- Institution of appeal in wrong Court on advice of Counsel -- Existence of ambiguity in law as to proper forum prevailing at the time leading to wrong advice -- Initial institution of the appeal in the wrong court was a bona fide act.(Para 5, 6)

Dinabandhu Sahu v. Jadumoni Mangaraj AIR 1954 SC 411; Krishna v. Chathappan (1890) ILR 13 Mad. 269; Highton v. Treherne (1878) 48 LJQB 167; Surendra Mohan v. Mohendra Nath AIR 1932 Cal. 589; Referred to

ORDER

1 This Civil Miscellaneous Petition is, in a sense, a simple proceeding seeking condonation of the delay in filing an appeal by the State against an award by the Sub Court of enhanced compensation in land acquisition proceeding. But questions of some importance have been raised by counsel for the respondent who contends that no special treatment should be accorded to the State as a litigant and if treated on a par with a private party, the merits of the case cannot justify the court absolving the appellant from the sin of delay.

2 The judgment and decree In L. A. R. No. 95 of 1965 on the file of the Subordinate Judge's Court, Mavelikara, were passed on 7-4-1967. The State was aggrieved by this decree and applied for copies for filing an appeal. The Court to which the appeal lay was the High Court as has now been decided by a Full Bench of this Court in a case reported in ILR (1969) 1 Ker 227 = (AIR 1970 Ker. 30) (FB) but on a misapprehension about the correct forum, the appeal was actually filed in the District Court at Mavelikara as A. S. No. 123 of 1967 on 16-8-1967. Later, that court returned the appeal "for representation to the High Court on 27-6-1969 and in the order of return a period of one month was granted for presentation to the proper court. Before expiry of this period, the appeal was represented in this Court on. 19-7-1969 The last date for filing-the appeal to this court was 17-10-1907 and since it was actually instituted only

on 19-7-1969 this long span of nearly two years was sought to be bridged by the petition for condonation of the delay."

3 The petitioner stated that he was entitled to exclusion of the period between 16-8-1967 and 27-6-1969 during which the appeal had been pending before the District Court at Mavelikara and that he was also entitled to tack on one month, which the District Court had granted to him for presentation to the proper court. If these exclusions were allowed, the arithmetic is in favour of the appellant and he will be in time; but counsel for the respondent strenuously contended that the appellant had no justification for filing the appeal in the District Court since the provision of law in the Travancore Land Acquisition Act was plain enough that the appeal lay to the High Court. He also urged that even assuming that on account of uncertainty of the law the appeal had been filed in the District Court under a bona fide mistake, there was no valid ground for not instituting it in the High Court immediately on its return by the District Court. The point counsel took was that the period of grace of one month given to the appellant by the District Court was without jurisdiction, that the appellant was bound to present the appeal in the High Court, without reference to any such invalid judicial extension of Limitation. If therefore, the period of one month was not allowable, the appellant should have represented the appeal shortly after 27-6-1969. Indeed, the papers, even on the showing of the appellant, had reached the Advocate General's Office on 8-7-1969. Since every day's delay had to be explained, there was none for the gap between 8-7-1969 and 19-7-1969 when the appeal found its way into the office of the High Court.

Counsel for the respondent has taken an additional point that the Full Bench decision of this court had been rendered as early as 17th January, 1969 and the State itself was a party to it. Therefore, the appellant had knowledge of the fact that these appeals lay not to the District Court but to the High Court direct and 0any delay in getting a return of the appeal from the District Court thereafter could not be said to be bona fide within the meaning of S.14 of the Limitation Act and would not be sufficient cause within the meaning of S.5 of the Limitation Act. All the delay after January 1969 and, at any rate, after March-April 1969, when all the law reports of Kerala had carried the above decision, -- it being assumed for the purpose of this argument that Government Pleaders read law reports regularly --could not be treated as justifiable cause. The stand of the counsel was that S.14 had no application to appeals and the appellant had to stand or fall by S.5 of the Limitation Act. The circumstances of the case did not constitute sufficient cause for the delay and the appeal was clearly out of time.

4 Counsel for the State filed an additional affidavit to light up some blurred spots in the original affidavit. Reading together the two affidavits the following facts have been made out. The appeal was preferred in the District Court at Mavelikara on 16-8-1967. The forum was chosen on legal advice, or rather as the affidavit of the concerned clerk states: "This was done on the written instruction of the District Government Pleader. Aleppey dated 8-8-1967". This advice, bona fide given, was bona fide believed in by the petitioner and the appeal was instituted in the District Court taking it to be the proper court - The appeal was ordered to be returned, as stated earlier, on 27-6-1969, granting one month's time for representation. Government thought that this being an order of a court could be acted upon, and assumed reasonably that the time so

allowed was available for filing the appeal in the High Court. That was why the appeal was actually instituted on 19-7-1969, well before the sands of time had run out. The case set out in the affidavit is that S.14 will apply and that the exclusion claimed is permissible.

5 Even a tyro will agree--and the Government Pleader readily agreed--that S.14 has nothing to do with the exclusion of time in filing appeals. So the Case has to be considered on the basis of S.5 of the Limitation Act only. There are three areas of delay which will have to be separately considered. The original institution of the appeal in the District Court instead of in the High Court is the first target of attack. I am afraid that in the light of the additional affidavit that government acted on the advice 'of the government pleader. Alleppey, it must be concluded that the State acted bona fide in this regard. I must also be alive to the legal ambiguity which then prevailed in regard to the appellate forum. As the Full Bench ruling itself discloses divergent views were taken and it is only now that the Full Bench ruling has settled the issue.
A large number of cases by the State and private parties have been instituted in the wrong court and the Full Bench of this court has suggested certain legislative amendments to obviate hardship to the innocent litigants resulting from the wrong court having been approached. I was party to that decision and to the best of my recollection the learned Advocate General invited the Court to make concrete observations about the nature of the amendments to be undertaken, as they may be of immense value to the State Government in pursuing the proper legislative course. This court gave certain carefully considered, concretely worded legislative advice in the fond hope that action would be taken by the State to avoid public hardship and to reduce litigation.

Although the judgment of this Court was rendered as early as January 1969 the year which has 'passed since, has not seen any difference to the indifference of the State to implement those suggestions. On the other hand, the State Government itself is either appellant or respondent in a large number of appeals instituted in this court only because the amendments have not been undertaken. Only a critical but informed public opinion can shake the State out of its legislative slumber on a non controversial matter, which inflicts expense and inconvenience on itself and the public. I had regarded it as proper, in a democratic set up, for the judges to suggest state action, legislative or executive, when the case on hand revealed a lacuna which caused public mischief. But there is a complementary duty in a democratic Administration to listen respectfully and to react promptly. I regret that this pious hope has failed here.

6 I have held now that the initial institution of the appeal in the wrong court was a bona fide act. The next point of time we are concerned with is the date of the Full Bench decision or its reporting in the law journals. Counsel argues that the State was a party to the decision and knew the correct law at least then and, therefore, could not "justify its inaction, in not getting a return of its appeal from the District Court. Had I been hypertechnical, I might have agreed with the submission.
The State, it is true, is not entitled to special treatment in a court. I respectfully agree with the observations made by a Division Bench of this Court in 1963 KLJ 979 to the effect:

"The law of limitation operates equally for or against a private individual as also a government. No special indul-gence can be shown to the government which in similar circumstances is not to be shown to an individual suitor. If it is felt that the Government departments delay matters so much that the periods of limitation already prescribed in the Limitation Act viz., 3 months is not long enough for the government or its agents, then the better course is to obtain amendment of the law through the legislature rather than to make an application to the court, invoking its power under S.5 of the Limitation Act. We are of opinion that such delays in Government offices are no justification for invoking the power of the court under S.5 and would not amount to sufficient cause."

Nevertheless, we have to take a practical view of the working of government without being unduly indulgent to the slow motion processes of its wheels. (Are we not painfully aware of the public criticism of delays in courts and apprehensive of a possible rebuke, physician, heal thyself?) When an appeal is pending, attention of counsel is usually drawn to the questions arising therein when it is posted for hearing. Quite probably, after the Full Bench decision was reported, the land acquisition appeals affected by that ruling were posted to be disposed of in its light. Government counsel would then have agreed to the absence of "jurisdiction of the District Court and prayed for a 'return of the appeal. Meticulously to dissect the period of pendency of the appeal into the pro Full Bench and the post Full Bench sections is to be too artificial. Broadly speaking, there was no remissness in the conduct of the government pleader and none on the part of government.

7 The fire of the attack of counsel for the respondent was concentrated on the invalidity of the order of the District Court granting one month's time for representation and the non availability of that order as a sufficient cause for the delayed presentation of the appeal in the High Court. A catena of cases was brought to my notice beginning with (he century old (1869) 5 Mad ITCR 407 and ending with 1964 KLJ 294 = (AIR 1964 Ker. 285). The long interval in between was also punctuated by a number of other rulings, such as those reported in 18 Ind App 121 (PC); 35 Ind Cas 595 = (AIR 1917 Cal. 79-1); 53 Ind Cas 955 = (AIR 1919 Cal. 4); AIR 1937 Pat 495 and AIR 1959 Andh Pra 349 many of which dealt with the true scope and effect of S.14 of the Limitation Act when a plaint was returned by a court which had no jurisdiction to direct representation to the court which could intervene it, but the order of return carried a direction allowing a time for representation. The legal position contended for is unexceptionable.

The ruling reported in 1064 KLJ 294 = (AIR 1964 Ker. 285) summed up the law and discussed the case law at length. It is not open to a court, when it returns a plaint on the grounds mentioned in S.14 of the Limitation Act, to give a further time to the plaintiff to represent in the proper court. I agree that the limitation provided by the law cannot be varied by acts of forensic philanthropy and a court which has no jurisdiction on its own showing. The said direction Is void and indeed, is misleading to the litigant as 1 will presently state. Had the proceedings been a suit to which S.5 of the Limitation Act would not apply and which could be salvaged only by S.14 of the Limitation Act, I would have had no be station in holding that the institution of the proceeding here was far out of time. S.14, under which the various rulings I have referred to were 'given, does not apply to appeals and a direction of the sort contained in the present order

of the District Court cannot serve to exclude that spell from the period of limitation fixed by the statute. However, the real question that fells for consideration is whether the provisions of S.5 are complied with and sufficient cause has been made out-

8 It is trite law that a person seeking condonation of delay has to explain every day's delay and that principle applies when S.5 of the Limitation Act is invoked. (Vide Vol. R, S. C. Encyclopaedia p. 117. C. A. 1830/67 and AIR 1960 Madh Pra HO). For a hundred years now since the decision in (1869) 5 Mad HCR 407 was rendered, it is settled law that the Court which returns the plaint or, for the matter of that, an appeal for want of jurisdiction cannot grant an extra period for representation in a proper court. Counsel for the petitioner pleads that even though the order may be void in the light of decisions adverted to above, it serves as sufficient cause for him to rely upon in explaining the delay in filing the appeal. In deciding any case under S.5 the burden rests on the petitioner to prove sufficient cause for the delay, but the court in deciding such a case must keep in the forefront of its mind the valuable and weighty observations of Venkatrama Iyer J. of the Supreme Court in Dinabandhu Sahu v. Jadumoni Mangaraj, (AIR 1954 SC 411. 414).
"*As was observed in the Full Bench derision in Krishna v. Chathappan. (1890) ILR 13 Mud 269 in a passage which has become classic, the words 'sufficient cause' should receive 'a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant*".

9 There are two sensitive points arising in this aspect of the case. The office of the Advocate General who is the legal mentor of the State Government, has chosen to file the appeal apparently assuming the period of one month allowed by the District Court to be valid. This assumption, however, is not correct legally, as the decisions adverted to by me earlier establish. Legal advice has misled the government even in filing the appeal in the District Court. Counsel for the respondent made a general submission that seeking shelter under the umbrella of legal advice is not always a sufficient protection in a court when S.5 of the Limitation Act is being considered. Counsel relied on a decision of this court reported in 1969 KLJ 748 in this behalf, where Mr. Justice Raman Nayar discountenanced erroneous legal advice as always sufficient as an explanation. His Lordship observed, although in that case the party who was a lawyer had relied on his own legal knowledge, that, "even if the party acted on legal advice, that would be no excuse if in the language of Brett L. J. in Highton v. Treherne. (1878) 48 LJQB 167 at p. 168). that advice betrays negligence or ignorance or gross want of legal skill". His Lordship also added--an observation which the legal profession will take serious note of --"*In such cases, the party has his remedy against his legal adviser but meantime must suffer. See in this connection. Surendra Mohan v. Mohendra Nath. (AIR 1932 Cal. 589)".*

10 Counsel for the appellant drew my attention to a ruling reported in AIR 1904 SC 1897. 1902 where an obvious mistake had been made by the State counsel and acting on that patently mistaken advice the State came up to the Supreme Court "to receive a reproof from that court." I may usefully extract excerpts from Para.10 of that judgment.
"*The reason for the delay given in the affidavit is that the Law Officer was of the opinion that the application for a certificate was maintainable under Art.134(1) of the Constitution. We do*

not see any justification for this opinion. There is no conflict of judicial opinion on this question. The only question that was before the Law Officer was whether the order sought to be appealed from was a final order. The order ex facie was an interlocutory order and so far as the Government of U. P. was concerned it could not possibly be held that any of its rights had been affected by that order. In the circumstances we cannot hold that a wrong legal advice is a sufficient ground for excusing the delay."

Thus it would appear that reckless and wrong legal advice cannot be the basis for excusing the delay into which a party has been tripped thereby.

Even so counsel for the State has drawn my attention to a ruling of the Supreme Court reported in 1969 (2) SCC 770 = (AIR 1970 SC 1953) where the court was willing to take a more generous and practical view on the subject, if I may say so with great deference. Hidayatullah C. J. observed:

"The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have seen quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation."

After adverting to certain circumstances which showed that the appellant was not trying to hide any fact or gain any monetary advantage by filing the appeal in the District Court as against the High Court. His Lordship observed:

"This appears to be the error which was committed by Mr. Raizada and we do not find anything in the case to show that this error was tainted by any mala fide motive on the part of the counsel for the litigant. In the circumstances we think that the Huh Court would have been justified in extending time under S.5 of the Limitation Act and the reasoning of the High Court unfortunately started from a wrong angle."

The High Court took the view that Mr. Raizada being an advocate of 34 years' standing could not possibly make the mistake in view of the clear provisions on the subject of appeals existing under S.39(1) of the Punjab Courts Act and. therefore, his advice to file the appeal before the District Court would not come to the rescue of the appellant under S.5 of the Limitation Act, The Supreme Court upset this approach.

I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on questions of law by courts are sometimes wrong. An amount of latitude is expected in such cases for to err is human and lay men as litigants are, may legitimately lean on expert counsel in legal as in other departments, without probing the professional competence of the advice. The court must of course, see whether, in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause when an application under S.5 of the Limitation Act is being considered. The State has not acted improperly in re-lying on its legal advisers.

11 In the present case, however the more important question is whether reliance by the State on the period of one month illegally given to it by the District Court was permissible and could

be treated as sufficient cause- The narrow question is whether it can at least amount to good cause even if it be a bad order. Counsel for the appellant relies upon a ruling of the Supreme Court reported in AIR 1966 SC 1631 where the following observations were made:

"*It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in applying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: 'Actus curiae neminem gravabit*."

The argument based on these observations is that the additional District Judge, Mavelikara, passed an order allowing one month's time. A party was entitled to proceed on the footing that at least the court knew the law and that a direction given by it was not invalid. The fact remains that the learned District Judge passed the order in the presence of both parties and it may not be a case of want of bona fides or manifest absence of due care if either party chooses to act on this void direction. After all, the act of Court should not harm parties. So I hold that the filing of the appeal within the time permitted by the District Court was not so unjustifiably delayed as not to deserve condonation by this Court.

12 However, the affidavit of the State Government for excusing the delay was hardly complete or concrete. Indeed, the petitioners prayed for exclusion of time, not excusing of delay. S.14 allows exclusion absolutely, while S.5 permits excuse as a matter of discretion. There was some confusion in the mind of the petitioner in this matter and further details were furnished only in a supplementary affidavit after the matter came to a contest in Court. In these circumstances, the State must, like ordinary parties, pay the penalty for the marginal negligence in the conduct of its proceeding. I therefore, direct the petitioner to pay the respondent costs Rs. 50/- and allow the petition for condonation, of the delay.
