

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**C.R. No. 96 of 2019**

**Reserved on : 04.12.2019**

**Date of decision: 09.12.2019**

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**Ved Prakash**

..Petitioner/Defendant/Counter-claimant.

**Versus**

**Rajneesh Kumar and another**

..Respondents/Plaintiffs/Non-counter-claimants.

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**Coram**

**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.**

**Whether approved for reporting ?<sup>1</sup> Yes**

**For the Petitioner :** Mr. Neeraj Gupta, Senior Advocate,  
with Mr. Ajeet Pal Singh Jaswal,  
Advocate.

**For the Respondents :** Mr. Anuj Gupta, Advocate.

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**Tarlok Singh Chauhan, Judge**

The defendant-counter claimant is the petitioner, who aggrieved by the order dated 27.06.2019 passed by learned District Judge, Shimla, H.P. in Civil Misc. Petition No.212-S/6 of 2016 in Civil Appeal No. 18-S/13 of 2019 whereby he condoned the delay in filing appeal against the judgment and decree dated 17.01.2015 in the Counter Claim No.65A-1 of 2006 preferred by the plaintiffs/respondents has filed the instant revision petition.

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the Judgment ?yes

2. Briefly stated the facts of the case are that the respondents/non-counter claimants/plaintiffs filed a civil suit against the petitioner/defendant/counter claimant titled Rajneesh Kumar and another vs. Ved Prakash. In the said suit, the defendant filed a counter claim No.65A-1 of 2006 and the same was titled Ved Prakash vs. Rajneesh Kumar and another.

3. As regards the civil suit, the same was dismissed in default for non-appearance and further the application for restoration was also dismissed in default. As regards the counter-claim, the respondents/plaintiffs had been proceeded ex parte on 23.5.2009 i.e. on the same date when the suit was dismissed in default.

4. The trial Court then proceeded to record ex parte evidence in the counter-claim and thereafter decreed the same vide judgment and decree dated 17.01.2015.

5. Aggrieved by the judgment and decree passed in the counter-claim, the respondents filed an appeal before the learned first Appellate Court and since the same was barred by 534 days, therefore, a separate application was filed for condonation of delay. However, the learned first Appellate Court vide its order dated 27.6.2019 allowed the same by observing (i) that no party could suffer for the fault of the counsel; and (ii) by relying upon the judgment of the Hon'ble Supreme Court in ***Rafiq and another vs. Munshilal and another (1981) 2 SCC***

788 and further holding that the Court should be liberal in condoning the delay after placing reliance on the following judgments:

- i) ***N. Balakrishnan versus M. Krishnamurthy*** (1998) 7 SCC 123 ;
- ii) ***Vedabai @ Vaijayanatabai Baburao versus Shantaram Baburao Patil and others*** (2001) 9 SCC 106 ;
- iii) ***Municipal Corporation Gwalior versus Ram Charan (D) by LRs. and others***, AIR 2003 SC 2164;
- iv) ***S. Ganesharaju (D) through LRs. Versus Narasamma (D) through LRs*** (2013) 11 SCC 341

6. Obviously, there cannot be any quarrel in the ratio laid down by the Hon'ble Supreme Court and rather even the latest judgments of the Hon'ble Supreme Court in ***Khodiyaar Rolling Mills vs. Paschim Gujarat Vij Company Limited*** (2018) 18 SCC 794, ***Bhivchandra Shankar More vs. Balu Gangaram More and others*** (2019) 6 SCC 387

and ***Robin Thapa vs. Rohit Dora*** (2019) 7 SCC 359 clearly states that rules of limitation are not meant to destroy rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek remedy promptly as during efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy. Unending period of launching remedy may lead to unending uncertainty and consequential anarchy. It has been reiterated that law of limitation is founded on public policy and sufficient cause should be given liberal construction so as to

advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputed to party seeking condonation of delay. This phrase is elastic enough to enable courts to apply law in meaningful manner which serves ends of justice. No hard-and-fast rule has been or can be laid down for deciding applications for condonation of delay but over the years it is observed that liberal approach needs to be adopted in such matters so that substantive rights of parties are not defeated only on ground of delay.

7. It is for this precise reasons that even the learned counsel for the petitioner has not questioned the order passed by the learned first Appellate Court below on these grounds and his only contention is that a person seeking condonation of delay must approach the Court with clean hands and state correct facts in the application and in case there is failure to do so, then discretion, if any, available to the Court is not to be exercised as "he who seeks equity must do equity".

8. Adverting to the application filed by the respondents seeking condonation of delay, it would be noticed that the only ground on which the delay was sought to be explained and condonation thereof being prayed for was that the respondents were under bona fide belief that the case was still pending as had been informed by their counsel repeatedly. It is only on 18.5.2016 that respondents/plaintiffs visited the Court and while on the way met the present counsel, who had been conducting

another matter of theirs before the Assistant Commissioner, Municipal Corporation, Shimla. The respondents showed him the copy of summons and copy of the plaint, whereupon they were apprised that the application received by them had been filed for execution of the judgment in Counter Claim No.65A-1 of 2006, decided on 17.01.2015 and that Civil Suit No. 22-1 of 2006 had been dismissed in default.

9. The respondents/ plaintiffs were shocked to know about this fact and asked their present counsel to apply for the records which was applied on 19.6.2016 and made available on 22.6.2016 and after going through the same, the appeal was being filed without any further delay. It is apt to reproduce paras 8 and 9 of the application, which read as under:

*"8. That the applicants most humbly submit that before 18<sup>th</sup> May, 2016 they were under a impression that the proceedings in the civil suit as also the counter-claim are still pending and it is only on 18<sup>th</sup> May, 2016 when they were informed by Sh. Anuj Gupta, while being shown the summons in Civil Suit No. 29-1 of 2016 that they came to know about the passing of the judgment and decree under challenge. Immediately thereafter, the applicants applied for the entire relevant record of the case including the Zimni orders which were made available to them on 22.6.2016 whereafter the present appeal is being filed without further delay (copy of the Zimni orders are being filed therewith)."*

*9. That the applicants have been believing their counsels bonafidely, and no malafides are attributable to them for non prosecution of their lis. However, the delay has occurred in filing the accompanying appeal on account of the facts and circumstances referred above. The delay has occasioned on*

*account of reasons which were beyond the control of the applicants and the applicant pray that since the matter involves their valuable rights, the delay may kindly be condoned."*

10. Now, the moot question is whether the averments made in the application are true and factually correct as per the record. Adverting to the record, it was on 23.5.2009 that the suit filed by the respondents was dismissed in default for want of appearance and the proceedings in the counter-claim were ordered to be continued. This is clearly evident from the order dated 23.5.2009, which reads as under:

23.5.2009: Present :None for the plaintiff.

*Sh.G.R.Chauhan, Advocate for the defendant/counter-claimant.*

*Case called repeatedly since morning till the rising of the Court, however, none appeared on behalf of the plaintiff. Hence, I have no other option, but to dismiss the suit of the plaintiff in default. The suit of the plaintiff is hereby dismissed in default. The defendant in the present suit has also preferred counter claim, accordingly, the proceedings in the aforesaid counter-claim shall continue and the plaintiff who is defendant in the aforesaid counter-claim is hereby proceeded ex parte. Accordingly, list the case for ex parte evidence on behalf of counter claimant on 16.7.2009. Record of the suit of the*

*plaintiff after due completion be tagged at the back of the file.*

*Sd/-  
(Harmesh Kumar)  
Civil Judge (Jr.Divn.) (V), Shimla."*

11. It is not in dispute that thereafter the respondents filed application for setting aside the ex parte order as would be evident from the order dated 15.7.2010, which reads as under:

*"15.7.2010: Present: Sh. G.R.Chauhan, Adv. for the defendant/counter-claimant.*

*Plaintiff already ex parte.*

*The Ld. Counsel for the defendant/counter-claimant stated at the Bar that the plaintiff has already been filed an application for set-aside the ex parte order and the same is fixed for 4/9/10 for consideration.*

*Let this case file be also listed for 4/9/10.*

*Sd/-  
Civil Judge (Jr.Divn.) (V), Shimla.*

12. However, even the application for setting-aside the ex parte order has not pursued. Nonetheless, to the advantage of the respondents, the learned trial Court on 12.3.2012 issued notice for their presence for 22.3.2012 as is evident from the order passed on the said date, which reads as under:

*"12.3.2012: Present: None for the parties.*

*Let contesting parties be served with notices  
for 22.3.2012.*

*Sd/-  
Civil Judge (Jr.Divn.) (V), Shimla.”*

13. It was pursuant to this order that both the respondents appeared in the earlier part of the day, whereas, none appeared for the petitioner/counter-claimant and presence was awaited and when again the matter was taken up on the later part of the day i.e. on 22.3.2012, the Court passed the following order in the presence of one of the plaintiff/respondent:

*“22.03.2012: Present: Plaintiff/non-counter-claimant in person.*

*Sh. Narvir Chauhan, Advocate for the counter-claimant/defendant.*

*Ld. Counsel for the counter claimant/defendant has sought yet another opportunity so that he can move the application to amend the counter claim. Record goes to show that two opportunities have already been granted since when the matter has gone on proper order till date no application has been filed. No further opportunity can be granted. Let steps, if any in regards with remaining witnesses of counter claimant be taken within 10 days where after the evidence of the counter claimant be summoned for 08.05.2012.*

*Sd/-  
(Akshi Sharma)  
Civil Judge (Jr.Divn.), V, Shimla”.*

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.

15. **In Dalip Singh vs. State of Uttar Pradesh and others**

**(2010) 2 SCC 114**, the Hon'ble Supreme Court considered the question whether relief should be denied who did not state correct facts in the application filed before the prescribed authority and who did not approach the High Court with clean hands, observed that while exercising discretionary and equitable jurisdiction, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

16. It is apposite to refer to the necessary observations which contained in paras 1 to 9 of the judgment, which read as under:

*"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-*

independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In *Hari Narain v. Badri Das* AIR 1963 SC 1558, this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations:

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material

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*statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."*

4. *In Welcome Hotel and others v. State of Andhra Pradesh and others etc. AIR 1983 SC 1015*, the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.
5. *In G. Narayanaswamy Reddy and others v. Governor of Karnataka and another* AIR 1991 SC 1726, the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p.263, para 2)

*"2. .... Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief*

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must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

6. *In S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others JT 1993 (6) SC 331*, the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. *In Prestige Lights Ltd. V. State Bank of India* (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v Kensington Income Tax Commissioners* (1917) 1 K.B. 486, and observed:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and

correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

8. *In A.V. Papayya Sastry and others v. Government of A.P. and others*, AIR 2007 SC 1546, the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and good conscience require such intervention.

9. *In Sunil Poddar & Ors. v Union Bank of India* (2008) 2 326, the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct."

17. In *Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others* (2010) 4 SCC 728, the Hon'ble High Court held that it is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to

bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.

18. Similar reiteration of law can be found in ***Mahanagar Telephone Nigam Limited vs. State of Maharashtra and others*** (2013) 9 SCC 92.

18. In ***Sciemed Overseas Inc. vs. BOC India Limited and others*** (2016) 3 SCC 70, the Hon'ble Supreme Court held that filing false or misleading statement itself is enough to invite adverse reaction. It is apt to refer to relevant observation as contained in para-28 of the judgment which reads as under:

*“28. Justice dispensation system would be adversely affected if restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon the false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. The purity of proceedings of the court cannot be permitted to be engulfed by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements on oath...”*

19. Person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

20. This Court may in this connection refer to the following passage from Halsbury's Laws of England Fourth Edition Vol.16 pages 874-876, which sums up the legal position in England as to the right of a party who has not come to the Court with perfect propriety of conduct and with clean hands, to claim an equitable relief."

21. In a very recent judgment of the Hon'ble Supreme Court in ***Sarvepalli Radhakrishnan University and another vs. Union of India and others (2019) 1 Scale 700*** has held that it is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. It is apt to reproduce the necessary observations as contained in the judgment, which read as under:

“11. .... It is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. The conduct of the College in this case to mislead this Court for the purpose of getting a favourable order is reprehensible and the College deserves to be dealt with suitably.

12. In **Re. Suo Motu Proceedings against R. Karuppan, Advocate** (2001) 5 SCC 289, this Court observed as under:

“13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.”

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13. *In Mohan Singh v. Amar Singh (1998) 6 SCC 686*, it was observed by this Court :

“36. ... Tampering with the record of judicial proceedings and filing of false affidavit in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of the unsullied stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity.”

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 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.

23. In view of the aforesaid discussion, I find merit in this petition and the same is accordingly allowed and the order passed by learned District Judge, Shimla on 27.06.2019 is set-aside and the application filed by the respondents/plaintiffs/non-counter claimants under Section 5 of the Limitation Act is ordered to be dismissed.

24. The revision petition is disposed of in the aforesaid terms, so also the pending application(s) if any. Interim order passed by this Court on 30.07.2019 is vacated.

**9<sup>th</sup> December, 2019**  
(GR)

**(Tarlok Singh Chauhan)**  
**Judge**

High Court

