(2015) 05 PAT CK 0102

In the Patna High Court

Case No : Token No. 22036 of 2015

ACC Limited APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Bihar Value Added Tax Act, 2005 — Section 79
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Limitation Act, 1963 — Section 12, 29

Citation : (2015) 3 PLJR 889

Hon'ble Judges : Ramesh Kumar Datta and Anjana Mishra, JJ.

Bench : Division Bench

Advocate : R.K. Agrawal and Shive Kumar, for the Appellant

Judgement

Ramesh Kumar Datta, J.—Heard learned counsel for the appellant. The matter has come up before us on the objection filed by the appellant with regard to the stamp report which has stated that there has been four days delay in filing the appeal since the limitation expired on 26.3.2015 counting the same from the date of communication of the judgment and order of the Tribunal on 26.12.2014.

2. The stand of learned counsel for the appellant is that the appellant had applied for certified copy of the impugned order dated 2.12.2014 on 21.11.2014 itself which was ultimately made ready for delivery on 30.12.2014 and delivered on the same day and accordingly, according to learned counsel, the appeal has been filed on the last date within the period of limitation. With regard to filing the application for obtaining the certified copy of the order on 21.11.2014, learned counsel submits that the order had been reserved on that day and hence the application for certified copy had been made and subsequently the matter was again heard on 2.12.2014 and judgment passed on that day.

3. Learned counsel for the appellant refers to Chapter-III-A, Rule 3(iii) of the Patna High Court Rules, according to which filing of the certified copy of the impugned order, if it is a judgment or order of a Court or statutory Tribunal, is an

essential requirement and thus the moment it becomes a mandatory requirement for filing of appeal the time taken in obtaining the certified copy ought to be excluded from the period of limitation to be counted.

4. Rule 3(iii) of Chapter-III-A of the Patna High Court Rules is in the following terms:--

"Save and except where the impugned order/s is a judgment or order of a Court or statutory Tribunal, in all other Civil and Criminal Writ proceedings the proceedings whereof are supported by affidavit as prescribed, the annexures including impugned orders/judgments need not be certified copies, but have to be true typed copies or true photocopies of such document/s."

5. Learned counsel also refers to the provisions of Order 41, Rule 1 of the Code of Civil Procedure under which the memorandum of appeal is required to be accompanied by a copy of the judgment which has been held by the Court to mean a certified copy of the same. It is submitted that once the requirement is of filing of the certified copy mandatorily the time taken for obtaining the certified copy ought to be excluded.

6. In support of the aforesaid propositions learned counsel relies upon a judgment of the Supreme Court in the case of India House Vs. Kishan N. Lalwani, of which it has been held as follows:--

"7. It is well settled that by virtue of sub-section (2) of Section 29 of the Limitation Act the provisions of Section 12 are applicable for computing the period of limitation prescribed by any special or local law. [See D.P. Mishra Vs. Kamal Narayan Sharma and Another, and Malojirao Narasingarao Shitole Vs. State of Madhya Pradesh, . The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations. At the same time full effect should also be given to those provisions which permit extension or relaxation in computing the period of limitation such as those contained in Section 12 of the Limitation Act. The underlying purpose of these provisions is to enable a litigant seeking enforcement of his right to any remedy to do so effectively and harsh prescription of time bar not unduly interfering with the exercise of statutory rights and remedies. That is why Section 12 has always been liberally interpreted. To wit, the time requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be excluded from computing the period of limitation although such copy may not necessarily be required to be filed along with the appeal, application or memo of representation or review. No distinction is drawn between decrees or orders pronounced on the original side or the appellate or revisional side. No application is required to be made seeking the benefit of Section 12 of the Limitation Act; it is the statutory obligation of the court to extend the benefit where available. Although the language of sub-section (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded from computing the period of limitation, the easier way of expressing the rule and applying it in practice is to find out the period of limitation prescribed and then add to it the time requisite for obtaining the copy--the date of application for copy, and the date of delivery, thereof both included--and treat the result of addition as the period of limitation. The underlying principle is that such copy may or may not be required to accompany the petition in the jurisdiction sought to be invoked yet to make up one''s mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefore the litigant must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. All that sub-section (2) of Section 12 of the Limitation Act says is the time requisite for obtaining the copy being excluded from computing the period of limitation, or, in other words, as we have put it hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed. In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither is it so provided in sub-section (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view."

7. We have considered the submission of learned counsel for the appellant. Section 79 of the Bihar Value Added Tax Act, 2005 under which the appeal has been filed, entitles the Commissioner or a dealer aggrieved by any order passed by the Tribunal, to file an appeal to this Court which appeal must be filed within a period of 90 days from the date of communication to the Dealer or the Commissioner upon any question of law arising out of the said order. Sub-section (6) thereof makes applicable the provisions of the Code of Civil Procedure, 1308 with respect to appeals to this Court save as otherwise provided under the Act and in so far as they may apply to the appeals under the said Section. Sub-sections 2 and 6 of Section 79 of the Bihar Value Added Tax Act are quoted below:--

"79(2) The Commissioner or a dealer aggrieved by any order passed by the Tribunal,--

(i) under the Bihar Finance Act, 1981 (Bihar Act 5 of 1981) as it stood before its repeal by Section 94, on or after the date of commencement of this Act; or

(ii) under this Act,

May file an appeal to the High Court, and such appeal under this section shall be filed within ninety days from the date of the communication to the dealer or the Commissioner on any question of law arising out of such order.

xxxxx xxxxx xxxxx

(6) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, (5 of 1908) relating to appeals to High Court, shall as far as

may be, apply in the case of appeals under this section."

8. Coming first to the provisions of the Bihar Value Added Tax Act, 2005 it is evident that the statutory period for filing the limitation petition has been prescribed under the Act itself which has been fixed as 90 days from the date of the communication to the dealer or the Commissioner of such order. Thus, the limitation starts running not from the date when the judgment and order has been passed by the Tribunal but from the date the order is communicated to the dealer hence, prima facie, the provision under Section 12 of the Limitation Act excluding the time taken for obtaining certified copy of the order, would not appear to be applicable to the said provision.

9. However, the thrust of learned counsel for the appellant in the present matter is essentially on account of the fact that the Patna High Court Rules under Chapter-III-A Rule 3(iii) provides for filing of the certified copy of the order of the Tribunal in case of its order being under challenge before this Court.

10. The other ground of learned counsel is that on account of the provisions of the Code of Civil Procedure, copy of the order which is to be read as certified copy of the order should accompany the memorandum of appeal.

11. So far as the CPC is concerned, it has been made applicable to appeals to this Court under Section 79 only so far as it may apply and subject to what is otherwise provided under the Act.

12. Thus, it cannot be said that the provisions of Order 41, Rule 1 CPC can be applied with its technicalities in a case under the provisions of the Bihar Value Added Tax Act and the same has to be applied only in keeping with the provisions of the Act. The Act is very clear that the limitation shall apply from the date of communication of the order whereas in the case of judgment and orders under the CPC, the limitation starts to run from the date of the order itself.

13. So far as the reliance on the provisions of the Patna High Court Rules is concerned, it is evident that the said rules cannot override the statutory provisions regarding running of the period of limitation which itself has been provided as from the date of communication to the dealer or the Commissioner of such order.

14. It is evident from the decision of the Apex Court in India House case (supra) that the exclusion of the period under Section 12 of the Limitation Act is granted, as a matter of course, even when filing of the certified copy may not be necessarily required to file appeal, application or memo of representation or review, the reason being that to enable the party in order to make up its mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition, the litigant must be armed with a copy of the order. In all cases where official copy of the order is not required to be communicated, the only way for a party to be aware of the order as passed can be by obtaining a certified copy of that order.

15. Under the Bihar Value Added Tax Act, the period of limitation itself starts from the date the order is communicated initially to the dealer. Thus, the dealer or the Commissioner already having the official copy of the order, would exercise the valuable right of pursuing the next remedy or obtaining legal opinion or drafting the memorandum of appeal from the date the order is communicated to the dealer. Hence, the decision of the Apex Court does not support the contention of learned counsel for the appellant.

16. Thus, it is held that the appeal must be filed under Section 79 of the Bihar Value Added Tax Act within 90 days from the date of the communication to the dealer or the Commissioner of such order and the time taken in obtaining the certified copy of the order cannot be excluded.

17. Coming to the provisions of Rule 3(iii) of the Patna High Court Rules, the same would require to be read down to the extent that while the memorandum of appeal may be accompanied by a certified copy of the judgment and order under appeal but in case the appellant does not have a certified copy of the order available at the time of filing of the memorandum of appeal he may still file the appeal within 90 days from the date of communication of the order by filing the official copy as communicated to him and the appeal shall be in such cases considered to be within the period of limitation with the requirement of course for the appellant to furnish the certified copy within a reasonable time as may be directed by the office or the Bench. If the certified copy is already available then the same is simply to be enclosed but in no case time for obtaining certified copy can be excluded for the purpose of counting 90 days from the date of communication.

18. The objection of the appellant is, accordingly, rejected and it is held that the appeal has been filed four days beyond the period of limitation prescribed.

19. The appellant may file an application for condoning the delay.

20. Learned counsel for the appellant submits that he would be filing an application for condoning the delay by tomorrow as the matter is very urgent. Let a copy of this order be communicated to the Stamp Report Section for its compliance in all appeals under the VAT Act or under similar provisions of other Acts, like the Income Tax Act.

