

(2015) 01 MP CK 0074

In the Madhya Pradesh High Court

Case No : M. Com. Appeal No. 3 of 2013

Akashdeep Goel and Others

APPELLANT

Vs

Ramkrishna Solvex Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Companies Act, 1956 — Section 10F, 397, 398, 402
Constitution of India, 1950 — Article 21

Citation : (2015) 2 MPLJ 331

Hon'ble Judges : Prakash Shrivastava, J.

Bench : Single Bench

Advocate : Vijay Assudani, Learned Counsel, for the Appellant; S.R. Saraf, Learned Senior Counsel and R. Khan, Learned Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Prakash Shrivastava, J.—Heard finally with consent.

2. This appeal under Section 10F of Companies Act, 1956 is directed against the order of Company Law Board Mumbai Bench Mumbai dated 5th July, 2013 passed in old C.P. No. 42/2008 (Mumbai) new C.P. No. 40/2013 (Chennai).

3. In brief, the company petition was filed by the appellants before the Company Law Board under Sections 397, 398 and 402 of Companies Act, 1956 alleging oppression and mismanagement of the affairs of the respondent No. 1 company. Company petition was filed before the Company Law Board Mumbai Bench and the matter was heard by the Judicial Member Mumbai Bench on 23/11/2011. Before passing the order, that Judicial Member was transferred to Chennai Bench on 30/4/2012 and when he was discharging his duties at Chennai Bench of Company Law Board, he has passed the impugned order on 5/7/2013 after more than 19 months of hearing the matter finally.

4. This court vide order dated 17/4/2014 had admitted the appeal on the

following substantial questions of law:

"1. Whether the impugned order can be sustained keeping in view the observations made by the Member, Company Law Board in para 12 of the order and also the fact that the matter was heard by the said Member at Mumbai Bench in October 2011 and subsequently he was transferred to Chennai Bench of CLB on 30/4/2012 and the order has been passed on 5th July, 2013 when he was working as Member of the Chennai Bench of CLB?

2. Whether in view of the above, the impugned order is liable to be set aside and the matter is required to be remitted back to the Mumbai Bench of the CLB for fresh adjudication?"

5. Since both the questions of law are interrelated therefore, they are being decided together.

6. I have heard the learned counsel for parties and perused the record.

7. It is undisputed that the Judicial Member had heard the arguments finally in Company Petition on 23/11/2011 and had reserved the matter for orders. Before he could pass the final orders, he was transferred to CLB Chennai Bench on 30/4/2012 and he had joined at Chennai Bench. Thereafter he was asked by the Bench Officer Mumbai Bench to pass the order in company petition and the record was sent from Mumbai Bench to Chennai Bench. No hearing took place at Chennai Bench and on the basis of the record received from Mumbai Bench, the Judicial Member has passed the impugned order on 5th July, 2013. The impugned order has been passed after a delay of more than 19 months.

8. If there is an unreasonable delay in delivery of judgment after hearing the matter finally and there is no exceptional circumstances for the delay, then the judgment can be set aside on the ground of delay since excessive delay in delivery of judgment shake the confidence of the litigant. Though there is no time limit prescribed for delivery of judgment but a long unexplained gap between hearing of arguments and delivery of judgment is undesirable since with lapse of time, it is more likely that all arguments raised in the matter may not be properly appreciated or dealt with. In one of the matter it has been expressed by the Supreme court that the justice delayed is justice denied but justice withheld is even worst than that.

9. Supreme court in the matter of R.C. Sharma Vs. Union of India (UOI) and Others, in a matter where there was a delay of 8 months in delivery of judgment after hearing arguments has held as under:

"12. Learned counsel for the appellant said all that could possibly be said on behalf of his client. He pointed out that the High court had given its judgment eight months after it had heard arguments. He urged that the result was that the High court did not deal with a number of submissions made because they had, apparently, been forgotten. The Civil Procedure Code does not provide a time limit for the period between the hearing of arguments and the delivery of a

judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice as we have often observed, must not only be done but must manifestly appear to be done." 10. Considering the ground of delay in delivery of judgment, Supreme court in the matter of Bhagwandas Fatechand Daswani and Others Vs. HPA International and Others, has set aside the judgment of the High court and remanded the matter by holding as under:

"3. Learned Attorney General appearing for the appellants urged that before the High court, the hearing of the appeal was concluded on 22-3-1989 but the judgment was delivered on 24-1-1994 nearly five years after the hearing was concluded, and this long delay in delivery of judgment by itself is sufficient to set aside the judgment under appeal. Learned Attorney General has also relied upon the decision of this Court in the case of Kunwar Singh V. Sri Thakurji Maharaj. At present, we are not disposed to go into this broad question as urged by the learned Attorney General. However, it is correct to this extent that a long delay in delivery of judgment gives rise to unnecessary speculations in the minds of parties to a case. Moreover, the appellants whose appeals have been dismissed by the High court may have the apprehension that the arguments raised at the Bar have not been reflected or appreciated while dictating the judgment-nearly after five years. This is fairly not disputed by learned Senior counsel, Shri K. Parasaran appearing for respondent No. 1. We, therefore, on this short question, set aside the judgment under appeal without expressing any opinion on the merits of the case and remit the case to the High court for deciding the appeal afresh, on merits. In view of the fact, that the matter has been pending for a considerable period of time, we request the High court to decide the matter expeditiously, if possible, within six months." 11. In the matter of Anil Rai Vs. State of Bihar, considering the earlier judgment on the point, the Supreme court has held as under:

"14. It has been held time and again that justice should not only be done but should also appear to have been done. Similarly whereas justice delayed is justice denied, justice withheld is even worst than that. This court in Madhav Hayawadanrao Hoskot Vs. State of Maharashtra, observed that procedure contemplated under Article 21 of the Constitution means " fair and reasonable procedure" which comports with civilised norms like natural justice rooted firm in community consciousness-not primitive processual barbarity nor legislated normative mockery. Right of appeal in a criminal case culminating in conviction was held to be the basis of the civilised jurisprudence. Conferment of right of appeal to meet the requirement of Article 21 of the Constitution cannot be made a fraught by protracting the pronouncement of judgment for reasons which are

not attributable either to the litigant or to the State or to the legal profession. Delay in disposal of an appeal on account of inadequate number of Judges, insufficiency of infrastructure, strike of lawyers and the circumstances attributable to the State is understandable but once the entire process of participation in justice delivery system is over and only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the Constitution under Part-III.

15. Learned counsel for appellants has referred to the judgments in Surendra Nath Sarkar Vs. Emperor, , Jagarnath Singh and Others Vs. Francis Kharia and Others, , Sohagiya V. Ram Briksh Mahto [1961 BLJR 282] to show that only on the ground of delay in rendering the judgment for the period ranging from six months to ten months, the High courts had held such judgments bad in law and set them aside. In R.C. Sharma Vs. Union of India (UOI) and Others, this Courts, after noticing that the Civil Procedure Code did not provide a time limit in delivery of a judgment held:

"Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgment. Justice, as we have often observed, must not only be done but must manifestly appear to be done." 16. In Bhagwandas Fatechand Daswani and Others Vs. HPA International and Others, this Court observed that "a long delay in delivering the judgment gives rise to unnecessary speculation in the minds of parties to case." This court in various cases including Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , R.S. Nayak Vs. A.R. Antulay and Others, , Kartar Singh Vs. State of Punjab, , Raj Deo Sharma Vs. The State of Bihar, , Raj Deo Sharma Vs. The State of Bihar, and Smt. Akhtari Bi Vs. State of M.P., has in unambiguous terms, held that " the right of speedy trial to be part of Article 21 of the Constitution of India."

12. In the present case, not only there is a delay of more than 19 months in delivery of judgment but learned Judicial Member while passing the impugned order has himself expressed that he had difficulty in remembering each and every point, submissions made by learned counsel for parties and he was of the opinion that it was not appropriate and fair at that point of time to pass order on the basis of the pleadings and documents alone. The learned Judicial Member has fairly expressed in the impugned order as under:

"12. Before proceeding to deal with the case on hand, it is my duty to record the reasons to pass this order sitting as the sole Member, Company Law Board at

Chennai. The company petition was heard and reserves for orders by me at Mumbai Bench. I had decided to pass orders in the matters in the sequence in which the orders were reserved. However, the orders could not be passed in the present matter in view of tremendous work pressure on me, being the sole Member at Mumbai Bench and dealing with the Company Cases of four large States. Whilst so, I was transferred from Mumbai Bench to Chennai Bench of CLB on 30.04.2012 and I was asked to join at Chennai Bench on or before 07.05.2012. In spite of shortage of time, I was able to pass orders in almost all but three matters including this petition. It is also pertinent to mention here that during the intervening period of the date of transfer and date of my relief from Mumbai Bench, I had passed orders in cases pertaining to directions of the Hon"ble High court of Bombay. The Bench Officer (Shri S.P. Sawant), Mumbai Bench vide his letter dated 08.03.2013 addressed to me stated that the Mumbai Bench received a letter dated 06.03.2013 from one Mr. Ashok Mehta, authorized representative of the petitioners in this petition stating that the petitioners are pressing hard to obtain final orders in the matter. The Bench Officer of Mumbai Bench, CLB alongwith his letter enclosed a photocopy of the letter of Mr. Ashok Mehta dated 06.03.2013. On perusal of the same, it is observed that it is not a letter but an application made to the CLB, Mumbai Bench. In his application Mr. Mehta requested the Mumbai Bench to do the needful to enable them to obtain final orders at an early date. As per the allocation of work, the Member (Technical) Mumbai Bench who is in charge of the particular state should have taken a decision on that application. However, it appears that the Member (Technical) directed the Bench Officer, Mumbai Bench to address a letter to me on the application of Mr. Ashok Mehta. It is more appropriate to mention here that I have not carried the files of those cases in which the orders were reserved by me at CLB, Mumbai Bench. As such, files in all the reserved cases form part and parcel of the Mumbai Bench. Further, the Mumbai Bench is aware of the fact that I will not be in a position to pass orders in cases of other Benches except that of Chennai Bench as per the revised allocation of work. Whilst so, the Secretary, Company Law Board, vide his letter dated 01.04.2013 requested me to " pass orders in this matter and other two matters within thirty days". In response to Secretary's letter, I replied to him immediately that the "Chennai Bench, CLB is having the jurisdiction of four large States under the jurisdiction of four High courts as Appellate Courts." It was also mentioned that " a large number of cases are being filed and approximately 550 cases are pending apart from a large number of Company Applications and I have to comply with the directions of the various High courts directing this Bench to dispose of the company petitions, company applications in a time bound manner." It is also mentioned in my letter that, "however, in the matters which are now transmitted, more than one year has passed since reserving the matters for orders and it is too late to pass orders as it is very difficult to remember each and every point, submissions, made by the learned counsel on either side in those matters." It is also mentioned that "Moreover, it may not be appropriate and fair at this point of time to pass orders in such matters on the basis of the pleadings and documents

alone." Further, I had suggested the Secretary, CLB to whom to transmit the above files, received from CLB, Mumbai. The Chairman, CLB, vide his letter dated 06.05.2013 asked me "to pass orders in accordance with law in those matters as early as possible by refreshing my memory in those matters." However, in view of the letter of the Chairman, CLB, referred to above, I am to pass this order only on the basis of documents transmitted by the Bench Officer, Mumbai Bench, CLB vide his letter dated 04.04.2013." 13. Keeping in view the aforesaid observation of learned Judicial Member as also keeping in view the judgments of the Supreme court noted above and the fact that the impugned order has been passed after more than 19 months of hearing the matter and also considering the allegation of the counsel for appellants that all issues raised by appellants have not been properly decided in the matter, I am of the opinion that the impugned order cannot be sustained. The substantial questions of law formulated by this court are accordingly answered in favour of appellants by setting aside the impugned order and remitting the matter back to the Mumbai Bench of CLB for fresh adjudication.

14. Mis. Company appeal is accordingly disposed of.

15. C.C. as per rules.