

(2003) 08 JH CK 0078
In the Jharkhand High Court
Case No : LPA No. 97 of 2003

Akshay Technologies Pvt. Ltd.

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2003) 4 JCR 173

Hon'ble Judges : P.K. Balasubramanyan, C.J.;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Siddharth Shankar Roy, Kalyan Roy, Ashok Kumar and Rakesh Sinha, for the Appellant; V.P. Singh S.K. Kapoor, M.M. Banerjee, P.K. Dutta, C.K. Dutta, Srijit Choudhary, C.S. Singh and Mukesh Kumar and P.K. Pd., SCCG, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—This appeal by respondent No. 5 in WP (C) No. 1514 of 2002 against the judgment dated 1.10.2002 was filed on 18.2.2003. Going by the certified copy of the judgment under appeal accompanying the memorandum of appeal, the appeal ought to have been filed on or before 31.10.2002. Hence, it was delayed. The fact that the appeal was belated was pointed out by the Registry while pointing out the defects and calling upon the appellant to remove the same. In spite of it, the appellant did not even bother to file an application u/s 5 of the Limitation Act praying for condoning the delay, leave alone making out sufficient cause for condoning the delay. It may be noted that the appeal came up on 3.3.2003 and again on 21.3.2003 and thereafter on 15.4.2003. In spite of it, no attempt was made to file an application for condoning the delay. Such an obdurate persistence in not filing the application for condoning the delay in filing the appeal cannot be overlooked. Condoning of such a conduct would only lead to encouraging deviations from practice and procedure set down by the Court and followed for a long time so as to lend formality, certainty and dignity to the proceedings in Court. The fact that Section 5 of the Limitation Act is normally

liberally construed in favour of a litigant is not a ground for condoning the persistent conduct of the appellant in refusing to follow the procedure set down by law and followed by all other litigants. We are, therefore, of the view that this appeal ought to be dismissed on the short ground that it is filed out of time.

2. We may also notice that the appellant does not deserve the exercise of any discretion by this Court in its favour. The appellant was admittedly a consumer of electrical energy on the basis of an agreement entered into with the Damodar Valley Corporation (hereinafter referred to as the DVC). The appellant committed default in payment of the bills and the Damodar Valley Corporation was constrained to initiate proceedings for disconnection of the electric supply. The Supply to the appellant was disconnected. The appellant thereupon approached the State Electricity Board and either by suppressing the fact that it was a defaulter to the DVC to the tune of Rs. 2.5 crores or by adopting some unfair or foul means, obtained a fresh connection from the State Electricity Board and the writ petition by the DVC was filed when the State Electricity Board refused to disconnect the supply to the appellant inspite of being requested to do so by the DVC by pointing to the default on the part of the appellant and that the State Electricity Board did not have the power to supply electrical energy to the appellant in view of the provisions in the Damodar Valley Corporation Act. The conduct of the appellant is not such that this Court, exercising jurisdiction under Article 226 of the Constitution of India, should go out of its way to exercise its discretion in favour of the appellant even in the absence of an application in that behalf. We are satisfied that we would be justified in rejecting the appeal as being barred by limitation.

3. The contentions on merits raised in the appeal are identical to those sought to be raised in LPA No. 76 of 2003 in which we have pronounced a separate judgment based on the arguments elaborately raised before us. In that judgment, we have taken the view that the learned Single Judge was correct in holding that the State Electricity Board did not have the power or right to supply electricity at a pressure of 30,000 Volts or more. On the basis of that conclusion also, this appeal deserves to be dismissed.

4. We dismiss the appeal with costs quantified at Rs. Five thousand payable to the Damodar Valley Corporation.

S.J. Mukhopadhyaya, J

5. I agree.