

(1999) 12 DEL CK 0062

In the Delhi High Court

Case No : C.M (M) 535, 536, 540, 564 1998

Associated Cement Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Limitation Act, 1963 — Section 5
Railway Claims Tribunal Act, 1987 — Section 18

Citation : (2000) 4 AD 543

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. M.L. Bhargava Adv, for the Appellant; Ms. Sudha Srivastava, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The petitioner herein filed the aforesaid petitions under Article 227 of the Constitution of India being Aggrieved by the order dated 4.3.1998 dismissing the application filed by the petitioner u/s 18 of the Railway Claims Tribunal Act read with Order IX Rule 9 CPC seeking for restoration of the claim applications which were dismissed in default for non-appearance on 23.9.1997.

2. The petitioner filed the claim applications against the respondent for recovery of compensation as damages caused to the consignments of cement booked for carriage by the respondent. The respondent resisted the said claims. The aforesaid claim applications were thereafter posted for evidence of the petitioner on 23.9. 1997. Since neither the petitioner nor its counsel was present when the matter was taken up for hearing, the applications were dismissed for default on 23.9.1997 and under those circumstances, the petitioner filed miscellaneous applications u/s 18 of the Railway Claims Tribunal Act read with Order IX Rule 9 CPC praying for setting aside the order of dismissal of the claim application for default and for restoration of the same.

3. The said applications were resisted by the respondent. Upon hearing the counsel for the parties, the applications for restoration were dismissed by the Tribunal holding that the petitioner failed to give any reason for non-appearance of either the petitioner or its counsel on 23.9.1997. It was also held that the petitioner failed to show any cause, much less sufficient cause, for their non-appearance on the date fixed for hearing of the case and, Therefore, there was no merit in the said applications which were accordingly dismissed.

4. Mr. M. L. Bhargava, counsel appearing for the petitioner submitted that although the claim applications were dismissed on 23.9.1997, the petitioner came to know about the dismissal of the aforesaid claim applications only on 3.11.1997, and immediately thereafter applications for restoration were filed on 4.11.1997 and as such there was no delay in filing the applications and, Therefore the Tribunal was not justified in rejecting the application for restoration of the claim application. It was also submitted that the counsel for the petitioner did not inform the petitioner that the aforesaid applications were dismissed on 23.9.1997 and hence for the laches on the part of the counsel, the petitioner should not be allowed to suffer.

5. Ms. "Sudha Srivastava, counsel for the respondent however, submitted that the aforesaid plea has no merit at all when the records of the cases are perused. She also submitted that as against the aforesaid order, an appeal lies and no appeal has been preferred by the petitioner and, therefore, the present petitions are to be dismissed as not maintainable.

6. Railway Claims Tribunal Act provides a remedy for filing of an appeal as against an order which is not interlocutory in nature. In this connection, reference may be made to the provisions of Section 23 of the Railway Claims Tribunal Act. The said Section provides that an appeal shall lie to the High Court having jurisdiction over the place where the Bench is located from every order not being an interlocutory order of the Claims Tribunal.

7. The order dismissing the applications for restoration of the claim applications cannot be said to be an interlocutory order. The same was a final order deciding the fate of the applications and, Therefore, an appeal lies against such an order passed by the Tribunal dismissing the applications seeking for restoration. The petitioner, Therefore, should have filed an appeal as a statutory appeal is provided for under the provisions of the Act as against the impugned order. Having not filed the appeal, the petitioner cannot maintain the petitions under Article 227 of the Constitution of India.

8. Be that as it may, since I have heard the learned counsel appearing for the parties even on merits of the impugned order, I propose to deal with the said aspect as well.

9. The applications filed by the petitioner was posted for evidence on 23.9.1997 and on that day since none appeared on behalf of the petitioners, the claim applications were dismissed in default because neither the petitioner or its

counsel was present when the matter was taken up for hearing. The applications for restoration were filed on 4.11.1997, i.e., after 41 days from the date of dismissal of the claim applications.

Rule 18 (2) of the Railway Claims Tribunal (procedure) Rules provides that where an application has been dismissed for default and the applicant files an application within 30 days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same.

In terms of the aforesaid provision, an application for restoration should be filed within 30 days from the date of dismissal of the claim application for default and then also the applicants has to satisfy the Tribunal that there was sufficient cause for non-appearance.

10. The aforesaid applications for restoration were apparently barred by time as they were filed on 4.11.1997. In the facts and circumstances of this case, the knowledge about dismissal of the applications would be computed from the date of dismissal, i. e., 23.9.1997 and not from 3.11.1997 as alleged by the petitioner herein. The restoration applications were, Therefore, barred by time. Thus, it was incumbent and necessary on the part of the petitioner to file an application u/s 5 of the Limitation Act seeking for condensation of delay in filing the aforesaid applications. If such an application is filed, then the Claims Tribunal has been given the power to admit an application for restoration of application dismissed for default even after the prescribed period of limitation, if the applicant satisfies the Tribunal that he had sufficient cause for not filing the application for restoration within the prescribed period of 30 days. Admittedly, no such application was filed before the Tribunal by the petitioner for condoning the delay in filing the aforesaid applications for restoration.

11. In order to satisfy myself, I have looked into the copy of the annexed applications seeking for restoration of the claim application in order to see whether the said applications could be considered as composite application under Order IX Rule 9 CPC and also u/s 5 of the Limitation Act. In my considered opinion, the said applications cannot be considered to be composite applications in view of the fact that in none of the paragraphs there is any prayer for condensation of delay in filing the application nor any Explanation has been given for the delay in filing the said applications. The said applications, Therefore, could not be said to be composite applications and were only the applications under Order IX Rule 9 CPC. In absence of an application u/s 5 of the Limitation Act, the Court did not have the power to condone the delay in filing the applications seeking for restoration of the claim applications. The Tribunal also found that even in the applications under Order IX, Rule 9 CPC, the petitioner has not given any reason for non-appearance of either the petitioner or its counsel on 23.9.1997.

12. As stated in Rule 18 (2) of the Railway Claims Tribunal (procedure) Rules, the party seeking for restoration has to satisfy the Court that there was sufficient case for non-appearance when the applications were called for hearing. As no cause had been cited for non-appearance, the said applications had no merit at all as found by the Tribunal.

13. The present petitions, Therefore, have no merit and are dismissed accordingly.