
(1981) 12 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 546 of 1981

Baldev Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 16-12-1981

Acts Referred:

Limitation Act, 1963 — Article 122

Citation : (1981) 12 P&H CK 0021

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : Achhra Singh, for the Appellant; J.P. Gupta, for AG Pb., for the Respondent

Final Decision : Allowed

Judgement

Gokal Chand Mital, J.—Petitioner's land was acquired by the State Government and since they were not satisfied with the award of the Land Acquisition Collector, they sought reference which came up for consideration before the Additional District Judge, Rupnagar. On 25th of February, 1977 neither the claimants nor their counsel was present and the reference was dismissed in defendant. On 11th of February, 1980, i.e. before the close of three years, an application was filed by the claimants for restoration of the reference proceedings. That application was dismissed on 1st of October, 1980 on the sole ground that the restoration application was filed about three years after the dismissal of the reference in default and no ground had been made out as to why there was such a long delay in filing the application. This is the claimant's revision against the aforesaid order.

2. After bearing the Learned Counsel for the parties, I am of the view that this revision deserve to succeed. The Learned Counsel for the claimants urged that article 122 of the Limitation Act, 1963 (hereinafter called the Act) did not apply to the present case and since there was no specific provision in that behalf regarding reference applications under the Land Acquisition Act, the residuary

article 137 of the Act would apply wherein the limitation is three years and in support of the submission, reliance has been placed on Alihusain Abbahbai and Others Vs. Collector, Panch Mahats, and Bhadar Munda and Another Vs. Dhuchua Oraon, It is also contended that the Additional District Judge had no jurisdiction to dismiss the reference application for default which he was bound to decide on merits.

3. On the other hand, counsel for the State has relied upon Smt. Ram Piari v. Union of India ILR (1978) I Del 1 (F.B.) wherein reference application has been equated with the suit and it has been held that limitation of 90 days would apply for filing application under Order 22 Rule 3 of the Code of Civil Procedure. It also held that reference could be dismissed for default.

4. After hearing the Learned Counsel for the parties, I am of the view that Delhi High Court has not laid down the law correctly and I am inclined to follow the view taken by the Patna High Court in Bhadar Munda's case (supra) Article 122 of the Limitation Act is as follows:--

Description of appeal Period of Limitation Time from which period begins to run

XX XX XX XX XX

122. To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay cost of service of process or to furnish security for costs. Thirty days The date of dismissal.

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A reading of the aforesaid provision would clearly show that application for restoration of suit or appeal or application for review or revision if dismissed in default of appearance, there would be limitation of thirty days for getting he same restored. Besides the afore-stated four matters, there could be numerous types of applications or petitions or reference whether under the Land Acquisition Act or under the CPC for which no provision has been made under article 122 of the Limitation Act. While Delhi High Courts considers that a reference application u/s 18 of Land Acquisition Act would be a suit be virtue of section 53 of the Land Acquisition Act, Patna and Gujarat High Courts in the above cited cases, have taken a view to the contrary. According to these two High Court, section 53 of the Land Acquisition Act merely provides for adopting the procedure contained in the CPC for decision of the reference application but that would not make the reference application as a suit and the applicants as the plaintiffs. What is of greater importance is that section 53 of the Land Acquisition Act does not make the Limitation Act applicable. In this regard the observations of P.N. Bhagwati, J. in Alihusain Abbasbhai's case (supra) are as follows :--

The applicant in a reference proceeding is not a plaintiff and the proceeding is not a suit within the meaning of Art. 176 of the Limitation Act (1908), since a "suit" should be commenced with the presentation of a "plaint". Section 53 also

does not make the provisions of Limitation Act applicable Art. 176 of the Limitation Act (1908) is therefore, not applicable to a reference proceeding u/s 18 of the Act.

I am in full agreement with the aforesaid view as also with the view taken by Patna High Court in Bhadar "Munda"s case (supra) and dissent with the view taken by the Delhi High Court. Since article 122 of the Limitation Act would not apply to a reference application, there will be no option, but to fall back on article 137 of the Limitation Act which provides three year limitation. Admittedly the application was filed within three years and cannot be held to be time barred.

5. Coming to the reasons for non-appearance and for making application late because the claimants had engaged a counsel who failed to appear on the date fixed and also failed to inform his clients about the dismissal of the same, since the mistake was of the counsel, the clients cannot be penalised

6. For the reasons recorded above, this revision is allowed, the order of the Court below dated 1st of October, 1980, is set aside and after granting the application for setting aside the order of dismissal for default, the order dated 25th February, 1977 is also set aside and the land reference No. 44 of 1976 is restored. The parties, through their counsel are directed to appear before the Additional District Judge, Rupnagar on 11th of January, 1982 for further proceedings in the same. The parties shall bear their own costs.