

(1987) 06 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 3023 of 1978

B.M. Shamanna Gowda @ Doddashamanna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-06-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 2 KarLJ 259

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-This writ petition is directed against the judgment and order in Appeal No. 486/1974 dated 4th February, 1978. That appeal came to be disposed of by the order referred to in a very peculiar circumstances. Earlier, the Karnataka Appellate Tribunal, Bangalore, (hereinafter referred to as the Tribunal) had allowed that appeal condoning the delay of seven years and remanded the matter in issue for fresh consideration by the Special Deputy Commissioner for Inams Abolition, Bangalore. However, that order dated 21-8-1975 was reviewed by the Tribunal in Review Petition No. 14/1976 filed by the present writ petitioner who was the review petitioner before the Tribunal. The operative portion of the order made in Review Petition is as follows:

"The review petition is hereby allowed and the order dated 21-8-1975 passed by this Tribunal in Appeal No. 486/1974 (IAB) is set aside and this appeal No. 486/1974 shall be again be set down for hearing on the question of limitation."

What should be noted with significance is that the order under review was not reversed by the review. The Tribunal did no more than to recall its order and set-down the appeal before it for fresh hearing on the question of limitation.

2. It is of equal significance to note that the order under review was neither challenged by the writ petitioner-2nd respondent before the Tribunal in the appeal nor by the person who was aggrieved by the review namely, the contesting respondent in this proceeding.

3. When the matter was heard a fresh after review, the Tribunal came to the conclusion that the delay in filing the appeal deserved to be condoned accepting the reasons given by the appellant before it for the inordinate delay of seven years. In short, the delay was explained by pleading that by bona fide mistake the appellant was prosecuting for relief in the Court of the Munsiff, which he could not get there, as that Court had no jurisdiction to grant the relief and therefore he was left with no choice but to file the appeal in the proper forum against the order of the Special Deputy Commissioner for Inams Abolition, Bangalore, before the Tribunal.

4. Now it is well settled principle of law that in matters where an authority or a Tribunal or a Court exercise its discretion, that discretion shall be not lightly dealt with by the superior Court or the Tribunal hearing an appeal or revision or otherwise seized on the matter merely because the superior Court or the superior authority exercising revisional jurisdiction may not have condoned the delay. One should interfere only when the exercise of discretion is arbitrary, perverse, capricious or unconscionable and there has been no judicial application of mind.

5. Now, these are not found in the order which is under challenge in this writ petition, i.e., the order dated 4th February, 1978. While accepting the delay and entertaining the appeal, the Tribunal has disposed of the appeal reaffirming the conclusion it had earlier reached in regard to the merits of the case remanded the matter to the Special Deputy Commissioner, as the discretion to condone the delay, in my opinion, has been rightly exercised by judicial application of mind and this Court should not interfere with that exercise of power.

6. Sec. 14 of the Limitation Act makes it abundantly clear that litigants should not be deprived of the relief to which they are entitled to merely because they prosecuted the relief under a bona fide mistake in the wrong forum. If that principle is recognised by the Legislature itself in order to do justice, this Court should not interfere with the order of the Tribunal, at this late stage, when there is no error in the order in question. In fact, the petitioner has successfully thwarted a fresh decision by the Special Deputy Commissioner for Inams Abolition for many years by prosecuting this writ petition. Had he not filed the writ petition, the matter should have been disposed of by the Special Deputy Commissioner long ago in the light of the observations made originally by the Tribunal while remanding the case.

7. In the result and for the reasons. I have given above, the impugned order of the Tribunal does not call for interference. Therefore, the petition is rejected.

Writ Petition is rejected.