
(1981) 07 KAPT CK 0033
In the Karnataka Appellate Tribunal
Case No : Appeal 885/78

Chowdegowda A.B.

APPELLANT

Vs

Alakere Service Co-op. Society Others

RESPONDENT

Date of Decision : 24-07-1981

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 105

Citation : (1981) 1 KarLJ 153

Hon'ble Judges : H. R. Krishnamurthy, Member; M. Niranjana Murthy, J

Judgement

H.R. Krishna Murthy, M.-This is an appeal made under Section 105 of the Karnataka Co-operative Societies Act, 1959 (hereinafter called "the Act") read with Section 3 of the Karnataka Appellate Tribunal Act, against the ex parte award dated 26-8-1976 passed in dispute No. 1062/1976-77 on the file of the Honorary Arbitrator of Co-operative Societies, Mandya.

2. The grounds of appeal are the following amongst others:

(1) The order of the court below is opposed to law and principles of natural justice, and equity.

(2) The learned arbitrator failed to note that there has not been any service, much less a proper service on the appellant, to pass a decree.

(3) The learned arbitrator has passed the award without giving adequate opportunity to the appellant.

3. Brief history of the case is as follows: Appellant here who is the counter petitioner before the lower court had borrowed a loan of Rs. 5,900 on 17-2-75 from the respondent society agreeing to repay the loan with interest at 12% p.a. on the surety of another member. The appellant failed to repay the loan with interest 12% p.a. as per the conditions stipulated in the bond. Thereafter the respondent society filed a dispute before the Assistant Registrar of Co-operative Societies Mandya, under section 70 of the Act who referred the dispute to an Honorary Arbitrator under section 71 of the Act for adjudication. The Honorary

Arbitrator passed an award in favour of the respondent society decreeing for Rs. 6,790 with interest thereon at the rate of 15% p.a. from 21-5-76 up to the date of realisation of the said sum. The appellant being aggrieved by the award filed an appeal before this Tribunal under section 105 of the Act and the same is before us.

4. Heard arguments of advocates on both sides. The advocate for appellant contended that the learned arbitrator has violated the principles of natural justice in deciding the same. Further contended that the learned arbitrator has failed to give adequate opportunity to substantiate his case. In the interest of justice the advocate for appellant prayed for condonation of delay for the reasons given in the affidavit. The advocate for respondent contended that the appeal filed is barred by limitation as it has been filed beyond 60 days time prescribed under section 105(e) of the Act. After hearing the arguments of both the advocates, the point for determination is whether the appeal is in time or not. The subject matter of limitation is discussed before going into the merits of the case.

5. On a perusal of records it is seen that a notice is issued to the appellant who is the counter petitioner before the arbitrator of Co-operative Societies, with a direction to attend the court on 26-8-76. This notice is served on the appellant. Appellant in his affidavit argued that he did not receive any notice in accordance with the rules of procedure and further stated that he was not aware of the passing of the award till 18-9-78. Advocate for respondent has stated that the appeal is barred by limitation even after obtaining the certified copy of the award. The certified copy of the award was obtained by the appellant on 18-9-78. In the instant case even if the service of summons is to be held as defective, limitation begins to run from the date of knowledge of passing of the award. It is well settled law that the date of knowledge is the date on which the appellant obtained the certified copy of the award. The award is passed on 26-8-76 and the appeal is filed on 18-12-78. Certified copy of the award was obtained on 18-9-78. According to the advocate for respondent the copy of the award was obtained on 18-9-78 and the appeal is filed on 18-12-78 after a delay of 31 days. Advocate for respondent argued that the appellant was not diligent in filing the appeal within the prescribed time. The next point to be considered is whether there is delay in filing the appeal after obtaining the certified copy of the award and if there is delay, had it been explained to the satisfaction of the court. As per section 105(e) of the Act the appeal should have been filed within 60 days from 18-9-78. i.e. on or before 17-11-78. But it has been filed on 18-12-78 after a delay of 31 days. In this case there is a delay apparently and therefore it is necessary to find out whether it has been explained satisfactorily. Appellant has filed an I.A.No. I for condonation of delay under section 5 of the Limitation Act read with section 3 of the Karnataka Appellate Tribunal Act and section 119 of the Act along with an affidavit. In the affidavit the appellant has stated that he was not served with any notice to attend the court and was not aware of the passing of the award. Further the appellant has stated that he was not well for some time and could not move on to Bangalore to make necessary arrangements

to file the appeal. Besides he has stated that he was advised by an advocate that the time permitted to file an appeal is 90 days. On account of the two reasons given in the affidavit there was delay which was bona fide and not intentional. The appellant has prayed for condonation of delay in the interest of justice. Appellant has produced a Medical Certificate issued by the Registered Medical Practitioner at Mandya that he was suffering from gastric trouble and was under treatment from 13-11-78 to 17-12-78. The appellant was advised to take necessary treatment, diet and rest. In the instant case two reasons are given by the appellant for condonation of delay. The first reason given is that he was suffering from gastric trouble as certified by the Doctor. The second reason given is that the appellant was wrongly advised by an advocate. The advocate who gave wrong advice to her has sworn to an affidavit and has stated that he advised the appellant to prefer an appeal within 90 days from the date of obtaining the certified copy. The Advocate has further stated that the advice given by him is bona fide and that the party should not suffer on account of his bona fide mistake. Under the circumstances the advocate has stated that he has come forward to file an affidavit in the matter. The Secretary of the respondent society has also filed a counter affidavit as far as condonation of delay is concerned. In the counter affidavit it is said that the allegations that the appellant was not aware of the proceedings and was not served with any notice are false and as such it is denied. The respondent's Secretary has further stated that the appellant was aware of the passing of the award and deliberately the appellant did not appear before the arbitrator. In the affidavit it is further stated that the averment made in the affidavit that he was not aware of the proceedings till 18-9-78 is false and it is made only to get over the bar of limitation. In the end the respondent has stated that the appeal filed by the appellant is liable to be dismissed in limine. In this Tribunal in Appeal No. 674/79 as decided on 24-7-80 in the case of S. Krishna Prabhu v. Assistant Commissioner of Commercial Taxes (Appeals), Mangalore, 1980 Kar. LJ. Tri. 153, it has been observed as follows:

"The principles which govern condonation of delay in filing an appeal are:

- (1) It must be established that the appellant was prevented by sufficient cause from filing the appeal on the last day of the period of limitation.
- (2) It must also be established that the appellant could not file the appeal on each subsequent day of the period of delay despite due diligence.

Sufficient cause is understood to mean a cause beyond the control of the appellant or one which the appellant even with the exercise of due care and attention could not avoid. Physical incapacity of the appellant owing to serious illness may be such a sufficient cause. Mere production of a Doctor's Certificate without any affirmation of the appellant's inability to file the appeal hardly serves to prove the requisite sufficient cause."

6. Where there is a delay in filing the appeal, the appellant is bound to explain

for each day's delay to the satisfaction of the court. Appellant has to give sufficient cause for not tiling the appeal before the last day of period of limitation and also to account for each day's delay. As regards the first reason that the appellant was unwell, we have to state that the appellant was treated as out patient. Nowhere it is stated that the ailment was so serious and has prevented the appellant even to file an appeal before this Tribunal. Even in the affidavit it does not disclose the name of the Doctor with whom she was under treatment and the type of ailment she was suffering. Mere production of a Medical Certificate without proving that the appellant was prevented even to file an appeal cannot be called as sufficient cause. The Medical Certificate does not disclose that she was even prevented from moving about. Moreover, the Medical Certificate is produced after 11/2 years after filing the appeal where sufficient cause is not shown. The question of condonation of delay on this account does not arise. The second reason given is that the advocate has given wrong advice on account of which she was not able to file the appeal in time. The advocate has stated in his affidavit that instead of filing the appeal before 60 days, the advocate has given advice to file the appeal before 90 days from the date of knowledge of the award. Here the date of knowledge of the impugned award is 18-9-78 and the appeal is filed on 18-12-78. Even in case we concede that the appellant has followed the wrong advice given by the advocate still there is one day delay which has not been explained satisfactorily. The appellant in any case has not been able to explain that she had good cause for not filing the appeal within the period of limitation and that she had not been able to explain for each day's delay subsequent to the period of 60 days in spite of her exercise of due diligence. We are also not convinced with the arguments of the advocate for appellant that this case fulfills the requirements for condonation of delay. We reject I.A.I as there was no good ground. For all the reasons given above we come to the conclusion that the appeal is barred by time. We have not discussed the appeal on merits.

7. In the result, the appeal is dismissed as barred by time. We order no costs as far as this appeal is concerned.