

(1979) 07 MAD CK 0009
In the Madras High Court

D. Suseela

APPELLANT

Vs

The Co-operative Tribunal (District Judge) and Others

RESPONDENT

Date of Decision : 26-07-1979

Acts Referred:

Citation : (1980) 93 LW 616 : (1980) 1 MLJ 343

Hon'ble Judges : S. Padmanabhan, J

Bench : Division Bench

Judgement

S. Padmanabhan, J.—The petitioner seeks by means of this writ petition a writ of certiorari to quash the order of the Co-operative Tribunal,

(District Judge, Salem). The facts leading to the filing of this writ petition are as follows:

2. The petitioner was employed in the Co-operative Super Market at Salem, the 3rd respondent herein. At the time of verification of stocks for

1969-70, it was found that there was a shortage to the extent of Rs. 1,682-58. The petitioner was then working as a sales-girl in the office of the

3rd respondent. Subsequently, the matter was referred to the Co-operative Sub-Registrar u/s 73. The case of the 3rd respondent was that the

petitioner was responsible for the shortage. As a result, the 2nd respondent passed an award against the petitioner holding her responsible for the

shortage. The petitioner came to know on 6th January, 1976 that an award had been passed by the second respondent on 27th May, 1974 itself

holding her responsible for the shortage. It is the case of the petitioner that she attended the enquiry on 27th May, 1974. On that day, the 2nd

respondent did not hold the enquiry and he told her that she would hear from him, subsequently regarding the date of enquiry and that she could

go. But nothing was heard for a long time. On 6th January, 1976 only, when the sales officer of the 3rd respondent went to attach the properties of the petitioner, she came to know that an award had been passed on 27th May, 1974 itself. Thereafter she applied for a copy of the award. She obtained the copy of the award on 1st June, 1976. Then she filed an appeal before the 1st respondent the Co-operative Tribunal (District Judge, Salem) on 28th June, 1976 together with an I.A. No. 682 of 1976 for condoning the delay of one year and 11 months in filing the appeal. In the affidavit filed in support of this application, the petitioner has stated that she came to know of the award on 6th January, 1976, that thereafter she applied for a copy of the award and that she got the same on 1st June, 1976. The Tribunal dismissed the application. Consequently, the writ petition has been filed to quash the said order of the Co-operative Tribunal.

3. In this case, the award has been passed on 27th May, 1974. u/s 96(3) of the Co-operative Society's Act, any person aggrieved by an award may appeal to the Tribunal within two months from the date of decision or award. But the appellate authority may admit an appeal preferred after the said period of two months if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period. Questions have arisen before the Court, whether the starting point of limitation is from the date of the decision of the award, or from the date of receipt of the award, by the aggrieved party or the date of knowledge about the decision or award on the part of the aggrieved party.

4. A similar question arose before the Madras High Court, in *Annamalai Chetti v. Col. J.G. Gloote* I L.R. (1883) Mad. 189. Section 25 of the Madras Boundary Act XXVIII of 1830 limited the time within which a suit may be brought to set aside the decision of the settlement officer to two months from the date of the award, and so the question arose as to when the time would begin to run. The High Court held that the time can begin to run only from the date on which the decision is communicated to the parties.

5. Again in this Court in *Kavanna Vana Ena Swaminathan alias Chidambaram Pillai Vs. Letchmanan Chettiar and Others*, it was held as follows:

In a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed, the expression ""within thirty days after the making of the order"" used in the said

section ""means within thirty days after the date on which the communication of the order reached the parties affected by it."":

A similar question arose again in this Court, in O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, Rajamannar, J. observed as follows:

If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and, therefore, must be presumed to have had the knowledge of the order.

These decisions have been approved by the Supreme Court, in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and

Another, . P B. Gajendragadkar and K.M. Wanchoo, JJ. observe as follows, in the case arising under the Land Acquisition Act:

Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved

against the said order by reference to the making of the said order it must mean actual or constructive communication of the said order to the party

concerned. So the knowledge of the party affected by the award made by the Collector u/s 12 of the Land Acquisition Act, 1894, either actual or

constructive is an essential requirement of fair play and natural justice. Therefore the expression ""the date of the award"" used in proviso (b) to

Section 18(2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or

constructively. It will be unreasonable to construe the words from the date of the Collector's awards used in the proviso to Section 18 in a literal

or mechanical way.

6. The same principles as laid down by this Court and the Supreme Court apply to Section 96(3) of the Co operative Societies Act (1961). When

the section refers to the fact that an appeal should be preferred within two months from the date of the decision, order, award, refusal, registration

or approval complained of, it should be taken that the two months prescribed for preferring the appeal is from the date on which there is either

actual or constructive communication of the said order to the party concerned.

In this case, the Court below has stated as follows:

She has no objection for the amount being deducted every month out of the salary given to her. Her admission that she did not know as to when

exactly she got the copy of the award will clearly go to show that she must have been fully aware of the passing of the award and that her

contention that she came to know about it only when the authorities came for attaching the properties cannot be accepted.

On the basis of these observations, the application to excuse delay in filing the appeal has been dismissed. This is factually wrong The Exhibit A-1

was read in extenso by the learned Counsel for the 3rd respondent. The petitioner's oral evidence before the Co-operative tribunal was also read.

This was necessitated because the petitioner's learned Counsel asserted that Exhibit A-1 did not contain any statement by the petitioner that she

had no objection to the amount being deducted from her salary, every month. On a reading of Exhibit A-1, it is found that Exhibit A-1 does not

contain any such statement by the petitioner as has been referred to by the lower Court. This position is accepted by the learned Counsel for the

3rd respondent, as well. Apart from this, there is absolutely, nothing to show that the copy of the award or decision was communicated to the

petitioner.

7. The learned Counsel for the petitioner Submits that the petitioner was furnished with a copy of the award only on 1st June, 1976. Within a

period of 60 days from the date of 1st June, 1976, the appeal has been filed in the lower Court. However, inasmuch as "the petitioner has

categorically stated in the lower Court that she came to know of the passing of the award on 6th January, 1976, when the officers came to attach

the properties, it is necessary to find out. on which date she filed an application for getting the copy of the award. If the application for the copy of

the award, either oral or in writing had not been made within 60 days from the date on which the petitioner came to know about the passing of the

award, then her right to file an appeal before the lower Court would become barred. On the other hand, if within the expiry of 60 days from 6th

January, 1976, she had filed an application or made an oral request for a copy of the award, then, the period taken for obtaining a copy of the

award from the date of such application and the date of furnishing the copy of the award would be excluded. The learned Counsel for the

petitioner is not able to tell the Court on which date, the application for the copy of the award was made. It is therefore, necessary to find out the

date on which the petitioner applied for a copy of the award before deciding whether the appeal before the tribunal was in time or not.

8. As I have already stated, the order of the lower Court is vitiated by a factual misunderstanding of the contents of Exhibit A-1. In these

circumstances, there is no other alternative, but to set aside the order of the lower Court and remit the same for de novo consideration and

disposal. in the light of the observations made herein. There will be no order as to costs. The writ petition succeeds and is allowed.