
(1979) 03 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5073 of 1974

District Co-operative Federation Ltd.

APPELLANT

Vs

The Registrar Co-operative Societies and Another

RESPONDENT

Date of Decision : 12-03-1979

Acts Referred:

Limitation Act, 1963 — Section 12, 29
Limitation Act, 1963 — Section 12, 29
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 359
Limitation Act, 1963 — Section 12, 29
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 359
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 359

Citation : (1979) AWC 401

Hon'ble Judges : N.D. Ojha, J;B.N. Sapru, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.D. Ojha, J.—An appeal filed before the Registrar, Cooperative Societies, against an order dated 9th October, 1973, passed by the Additional Registrar as sole arbitrator in a dispute referred to him under the U.P. Cooperative Societies Act, was dismissed by the Registrar by his order dated 20th May, 1974 on two grounds: (1) that the appeal was barred by time and (2) that court fees payable on the memorandum of appeal as contemplated by Rule 359 (kha) of the U.P. Cooperative Societies Rules, 1968 had not been paid thereon. It is this order of the Registrar which is sought to be quashed in the present writ petition.

2. The case of the Petitioner in regard to the appeal being barred by time is that if the time spent in obtaining the copy of the order of the Additional Registrar, namely, from 24th October, 1973 to 5th December, 1973 was excluded the appeal was within time. In out opinion, there is substance in this submission. In view of Section 29 of the Limitation Act, 1963, the provisions contained in Section 12 of the said Act were applicable and the time spent in obtaining the copy of the order of the Additional Registrar had to be excluded. As seen above

the order of the Additional Registrar was dated 9th October, 1973. The appeal appears to have been filed on 18th Dec, 1973 and if the time between 24th October, 1973 to 5th December, 1973 is, excluded the appeal was apparently within time. There can be no doubt that the time between 24th October, 1973 to 5th December, 1973 had to be excluded in view of Section 12 of the Limitation Act. Consequently the finding of the Registrar in the impugned order that the appeal was barred by time cannot be sustained.

3. In regard to the second ground on which the appeal has been dismissed the Petitioner's case is that the relevant rule under which court fees became payable came into force on 31st December, 1968 and since the reference in the instant case had been made on 2nd December, 1967 the right of appeal which is a substantive right accrued in favour of the Petitioner on that very date and the rule which came into force on 31st December, 1968 could not be applied retrospectively. In our opinion, there is substance in this submission also. That a right of appeal is not a mere matter of procedure but is substantive right that this right is a vested right and accrues to the litigant and exists as on and from the date of the commencement of the Us stands settled by the decision of the Supreme Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, . It has further been held in that case that this vested right of appeal can be taken away by a subsequent enactment only if it so provides expressly or by necessary intendment and not otherwise. In *State of Bombay Vs. Supreme General Films Exchange Ltd.*, , it was held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment. In that case the Court-fees Act had been amended by the Court-fees (Bombay Amendment) Act, 1954. By the amendment a higher amount of court-fees became payable. It was held that the court-fees payable on the memorandum of appeal would be payable according to the law in force at the date of filing of the suit and not according to law in force at the date of filing of the memorandum of appeal.

4. In view of the aforesaid decisions it is apparent that in the instant case the right of appeal having accrued in favour of the Petitioner on 2nd December, 1967 when reference was made and on which date no court-fees was payable on the memorandum of appeal filed against the award, the subsequent rule which came into force on 31st Dec., 1968 prescribing the court-fees to such memorandum of appeal could not be applicable to the memorandum of appeal in question. Nothing has been brought to our notice in the relevant rules which may show that either expressly or by necessary implication it was made retrospectively applicable.

5. In the result the writ petition succeeds and is allowed and the impugned order of the Registrar, Cooperative, Societies, Respondent No. 1, dated 20th May, 1974, is quashed and he is directed to decide the appeal afresh on merits in

accordance with law keeping in mind, the observations made above. In the circumstances of the case there will be no order as to costs.