
(2013) 02 AHC CK 0066

In the Allahabad High Court

Case No : First Appeal From Order (defective) No. 301 of 2013

Executive Engineer, Electricity Distribution Division and Others **APPELLANT**

Vs

Smt. Sukhpal Kaur **RESPONDENT**

Date of Decision : 21-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Employees Compensation Act, 1923 — Section 30
Limitation Act, 1963 — Section 5
Workmens Compensation Act, 1923 — Section 30

Citation : (2013) 3 ADJ 194 : (2013) 4 ALJ 618 : (2013) 2 AnWR 589 : (2013) 137 FLR 212

Hon'ble Judges : Rakesh Tiwari, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Rajendra Kumar Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellants at length and perused the impugned order as also papers filed alongwith memo of appeal. This appeal has been filed with the delay of 117 days. In support of application u/s 5 of Limitation Act for condonation of delay in filing the appeal, affidavit of Pankaj Goyal, Executive Engineer, Electricity Distribution Division, Hapur, has been filed.

2. It appears that a claim application was filed by the claimant-respondent for an award under the Workmen Compensation Act, 1953 against the appellant alleging that her husband Prabodhan alias Bittu was employed as labourer with the appellant at monthly pay of Rs. 4,000/- per month. He was member of Electricity Employees Union. On 29.5.2008 he was directed by the appellant Nos. 2 and 3 to climb on L.T. line for its repair stating that shut down had been taken, but it was not so, as a result whereof he got shock with electric current and after sustaining injuries fell down. He was hospitalised on 30.5.2008 in Safdarjang Hospital, New Delhi where he succumbed to the injuries on 8.6.2008.

3. The appellants did not appear before the Workmen Compensation Commissioner to contest the case inspite of sufficient service through registered post and it was ultimately decreed ex-parte on 25.8.2012, and award of Rs. 4,49,000/- was passed.

4. The case of the appellants is that no notice of claim petition was ever sent to them and the ex-parte award had been passed. An application under Order 9 Rule 13 C.P.C. was filed on their behalf on 6.10.2012 which had also been dismissed on 19.1.2013. In the affidavit filed in support of delay condonation application Sri. Goyal has reiterated the fact about no knowledge of the case and non service of notice. It has been stated that certified copy of award reached in the office of the appellant on 18/19.9.2012 and after inquiry from the local advocate recall/restoration application was filed on 6.10.2012 which was rejected on 19.1.2013. It has been further stated that the appellant wrote letter to the higher authorities on 28.11.2012 and 4.1.2013 for releasing the amount of award, but in the meantime recovery citation was sent to the Collector, Hapur and after receiving permission and nomination from higher authorities for engaging panel counsel letter was written to him to file writ petition for obtaining interim relief or stay against the recovery citation during pendency of restoration application. Consequently, writ petition No. 3612 of 2013 was filed which was dismissed by this Court on 22.1.2013 with the observation that if the appellants file statutory appeal u/s 30 of Employee's Compensation Act then the delay in filing the appeal may be condoned and the appeal may not be dismissed on the ground of delay and laches. It is in this background that instant appeal has been filed on 19.2.2013.

5. Without going into the issue regarding service of notice of claim petition before the Workmen Compensation Commissioner on the appellants, we are confined to the application u/s 5 of Limitation Act. Admittedly, the appellants came to know about the award on 18/ 19.9.2012. They could have preferred appeal against the ex-parte award u/s 30 of Workmen Compensation Act, before this Court, but they chose to file restoration application under Order 9 Rule 13 of C.P.C. before the Workmen Compensation Commissioner. We are conscious of the fact that the Court should adopt liberal view in condoning the delay in filing the appeal, but it does not mean that appellant is not required to show sufficient cause for condonation of delay. Inter-department correspondence including with counsel for the appellant filed as annexures alongwith delay condonation application show that on 28.11.2012 it was decided after consultation of officers and counsel of the appellants that an appeal be filed in this Court and the amount of award be deposited under protest in the office of Commissioner Employee's Compensation Ghaziabad. Another letter dated 26.12.2012 has been filed as Annexure-3, in which it was reiterated that in the interest of the department first appeal be filed in the High Court and the Executive Engineer wrote letter to the Senior Personnel Officer of U.P. Power Corporation, Paschimanchal Vidyut Vitran Nigam Ltd. Meerut to recommend the name of Sri. R.K. Mishra, departmental Advocate for filing the appeal. However, u-turn was

taken and the same Executive Engineer sent certified copies of order sheet, application etc. to the counsel for the appellants for filing writ petition on 4.1.2013. Thereafter, writ petition (c) No. 3612 of 2013 was filed in which this Court passed the following order on 22.1.2013:

Heard learned counsel for the petitioner and perused the record.

This petition is directed against an order dated 6.10.2012 passed under Workmen Compensation Act awarding compensation to the tune of Rs. 4,49,000/- to the contesting respondent.

Admittedly, the petitioner has an efficacious remedy of filing a statutory appeal against the said order. Considering that adjudication would necessarily involve adjudication on facts, it would be appropriate that the petitioner is relegated to the alternative remedy.

Accordingly, the writ petition is dismissed with the aforesaid liberty. In case, the appeal is filed within four weeks from today, the same shall not be dismissed merely on the ground of delay.

6. Perusal of above order shows that the appellants challenged the order dated 6.10.2012 passed under the Workmen Compensation Act. Learned counsel for the appellants fairly conceded that no such order on this date was passed in the proceedings under the Act. In the affidavit it had been mentioned that writ petition was filed against recovery citation. In the instant appeal, the award dated 25.8.2012 is under challenge. The Court in the aforesaid order gave liberty to the appellants to file appeal against the order dated 6.10.2012 within four weeks observing that the same shall not be dismissed merely on the ground of delay. We are afraid whether such direction can be given by Writ Court to the Appellate Court under the Statute. The application u/s 5 of Limitation Act is to be decided by the Court having jurisdiction to entertain and dispose of the appeal. No doubt the Court in exercise of its discretion can grant liberty to the parties to do or perform a legal act within the framework of concerned Statute or Rules. No party who is negligent in prosecuting a case can have the benefit of such benevolent direction of the Court. In the instant case, we find that even after having knowledge of impugned award on 19.9.2012 no effort was made to file appeal before this Court within the prescribed limit and to get the amount of statutory deposit sanctioned and released, but the department chose to file a writ petition in which the award cannot be challenged. However, the tenor of the order dated 22.1.2013 shows that main emphasis of appellants' counsel was to have operation of the impugned award stayed. Even if, we calculate limitation from filing of instant appeal, since 19.9.2012 even then it is barred by time and irresponsible and ill-advised officers of the appellants did not prefer the statutory appeal. It is not a case in which concerned litigant is illiterate and rustic villager. The appellants are a department headed by senior and experienced administrative officers of the State having well equipped legal cell as also battery of competent lawyers in its armoury. It is unfortunate that officers of the

appellants could not decide within the stipulated limitation period whether appeal is to be filed or a writ petition is to be instituted. The appellants filed restoration application under Order 9 Rule 13 C.P.C. on 6.10.2012 and even then they could have preferred the appeal challenging the impugned award before this Court. It is also pertinent to note that the appellants have not so far challenged the order dated 19.1.2013 passed by Workmen's Compensation Commissioner whereby their application under Order IX Rule 13 CPC was rejected. It means that they have acquiesced with the aforesaid order.

7. It is significant to note the observations of this Court given by one of us (Hon''ble Rakesh Tiwari, J.) in Second Appeal (Defective) No. 250 of 2010: State of U.P. through Collector, Azamgarh v. Keshav Murari Rai, decided on 3.7.2010 wherein it has been observed that:

Learned Standing Counsel has cited the following judgments in support of this second appeal being maintainable having been filed beyond period of limitation and on the ground that due to plausible reason the appeal could not be filed in time.

- (1) State of Haryana Vs. Chandra Mani and others, ;
- (2) Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, ; and
- (3) N. Balakrishnan Vs. M. Krishnamurthy, .

8. On the basis of the aforesaid three judgments, the Standing Counsel has urged that the Court is empowered to condone the delay in filing appeal.

9. In the case of State of Haryana v. Chandra Mani and others (supra) it has been held that sufficient cause of delay should be considered with pragmatism in justice-oriented manner. Certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic set-up involving red-tapism. Officer concerned should be made personally responsible for the delay in filing the appeal. State cannot be put on the same footing as an individual.

10. In paragraph 11 of the above judgment, the Court further held that;

litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by, officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise-is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible,

If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognisant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause.

11. On the basis of the case cited above in the case of *Special Tehsildar v. K.V. Ayisumma* (supra) in paragraph 2, it has been held that;

The transaction of the business of the Government being done leisurely by officers who had no or evince no personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even inspite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen.

12. In the case of *N. Balakrishnan v. M. Krishnamurthy* (supra) it has been held; that in absence of mala fide or deliberate delay as a dilatory tactic, Court should normally condone the delay in filing of the petitions or appeals.

13. The Court further held that "Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics" but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time".

14. Generally, the Courts adopt lenient view while deciding the application for condonation of delay. However, the position now has become critical and requires remedial approach to the Government Officers who keep the matters pending and take their own time to grant permission for challenging the orders in higher Courts either because they are incapable of taking decision in such matters or do not want to take a decision. The State Government is the bigger litigant in country. It has the aid of Government Counsels in lower judiciary, Standing Counsels in High Courts and Government Advocates on panel in Apex Court. The State Government has its legal cells for various departments and highly professional legal officers on its rolls. Even though provisions of Section 5 of the Limitation Act make no distinction between State and citizens, it appears that they have taken the Courts in their hand for condoning the delay whenever they file petition as in some cases the Apex Court and the High Courts have granted them liberty in the peculiar facts and circumstances of that case by condoning

delay in filing the petitions. This attitude of the State Government is to be changed and the Courts cannot pamper the lethargic and mental relapsed condition of such State offices and their officers for not taking a decision timely in filing petition or appeals. The rights of successful party cannot be kept at bay for all times to come till the State Government or its officers wake from their slumber.

15. It is not expected to a Government machinery which consists of all possible expertise and has the benefit of opinion of its counsels as in the present case to continue in hyper motion. The posts of Secretary and Chief Secretary to the Government are posts of responsibility and they have to take a decision within reasonable time if in their opinion appeals, revisions and writ petitions etc. are to be filed from the orders of lower Courts.

The Courts cannot humour the State Government by casually condoning delay in approaching the seat of justice. Every-one, whether State or a citizen is equal in the eyes of law.

16. In view of the above legal position in the facts and circumstances, we are constrained to observe that the officers of the appellants utterly failed to take a proper decision within the period of limitation for the reasons best known to them to file statutory appeal against the award, as such we find that that the appellants have failed to show sufficient cause for condonation of inordinate delay in filing the instant appeal.

17. In view of the above, application for condonation of delay is rejected. As a consequence, appeal also stands dismissed as barred by limitation.