
(2015) 05 RAJ CK 0053
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2838 of 2015

Godrej Agrovvet Ltd.

APPELLANT

Vs

Ramdev Singh and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Limitation Act, 1963 — Section 14, 5
Payment of Wages Act, 1936 — Section 17

Citation : (2015) 146 FLR 395

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Suresh Sahni, for the Appellant; Anand Sharma and Arti Goyal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This petition has been filed against the order dated 3.11.2014 passed by the District and Sessions Judge, Ajmer in civil misc. appeal No. 03/2014. By the impugned order the District and Sessions Judge, Ajmer as the Appellate Authority under section 17 of the Payment of Wages Act, 1936 (hereinafter "the Act of 1936") dismissed the petitioner Company's appeal inter-alia on the ground of limitation refusing to condone the delay of 8 years 3 months in its application under section 5 read with section 14 of the Limitation Act.

2. Mr. Suresh Sahni appearing for the petitioner has submitted that the Payment of Wages Authority passed an ex-parte Judgment dated 9.9.2004 against the petitioner Company for reasons of the petitioner company's counsel pleading no instructions. In the circumstances, the petitioner company moved an application on 25.1.2005 before the Payment of Wages Authority for recalling the order dated 9.9.2004. The said application was dismissed on 13.6.2005. It has been submitted that the order dated 13.6.2005 passed by the Payment of Wages Authority dismissing the petitioner company's application for recall of the order

dated 9.9.2004 was put to challenge before this Court in SBCW P. No. 8737/2005. Initially this Court granted interim protection to the applicant company. However, on the matter coming up before this Court on 14.12.2013, it was dismissed on the ground of petition not being maintainable for reasons of availability of alternative remedy of an appeal under section 17 of the Act of 1936. The petitioner company was allowed to avail its remedy of an appeal under the Act of 1936 along-with an application under section 5 read with section 14 of the Limitation Act for condonation of delay for the period during which the challenge to the order dated 13.6.2005 was pending before this Court in SBCW P. No. 8737/2005. It has been submitted that no sooner the order dated 14.12.2013 was passed by this Court, the petitioner company filed an appeal before the District and Sessions Judge, Ajmer under section 17 of the Act of 1936. The appeal was accompanied with an application under section 5 read with section 14 of the Limitation Act seeking condonation of delay for reasons of the petitioner company in the interregnum having pursued a wrong remedy without availing its right of appeal under section 17 of the Act of 1936.

3. Mr. Suresh Sahni appearing for the petitioner company submits that however vide impugned order dated 3.11.2014 the application for condonation of delay has been dismissed. It has been submitted that while passing the order dated 14.12.2013 if the Court had visualized that the delay may not be condoned, it is unlikely that it would have remitted the matter to the Appellate Authority. Counsel termed the dismissal of the appeal on the ground of limitation as a "very hyper technical" approach in the matter and submitted that ordinarily Courts should seek to adjudicate disputes pending between the parties on merits - as then alone justice is rendered. It has been therefore prayed that the order dated 3.11.2014 dismissing the application for condonation of delay in filing the appeal against the judgment dated 9.9.2004 as also the appeal as a consequence be set aside and the matter be remanded to the Appellate Authority for adjudication of the appeal against the determination dated 9.9.2004 by the Payment of Wages Authority on merits in accordance with law.

4. In support of his submissions counsel has placed reliance in the case of Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, (2004) 2 CTC 189 : (2004) 166 ELT 290 : (2004) 1 JT 20 Supp : (2004) 137 PLR 298 : (2004) 3 SCALE 23 : (2004) 3 SCC 458 : (2004) AIRSCW 6212 : (2005) AIRSCW 209 : (2004) AIRSCW 1478 : (2004) 7 Supreme 769 : (2004) 3 Supreme 630 .

5. Per-contra, Mr. Anand Sharma appearing for the respondent workmen submits that mere remanding the matter by the court under the order dated 14.12.2013 passed in SBCW P. No. 8737/2005 was not an adjudication on the petitioner company's application for condonation of delay in filing the appeal after lapse of 8 years and 3 months following the judgment dated 9.9.2004 passed by the Payment of Wages Authority fixing the liability on the petitioner company to pay due wages along-with penalty to the respondents workmen. It has been submitted that on the matter being remitted by this Court to the Appellate

Authority after refusing to entertain the writ petition on the ground of alternative remedy, it was within the sole discretion judiciously exercised, of the Appellate Authority to address the application under section 5 read with section 14 of the Limitation Act on its own merit in accordance with law. This was so done. It has been submitted that for one the judgment dated 9.9.2004 passed by the Payment of Wages Authority was not under challenge in SBCW P. No. 8737/2005, only the order dated 13.6.2005 was and consequently any observations made in the court's order passed on 14.12.2013 would be of no relevance for condoning the delay in filing the appeal against the judgment dated 9.9.2004. It has been further submitted that only the order under challenge in SBCW P. No. 8737/2005, was the one dated 13.6.2005 whereby the petitioner company's application for recall of the judgment dated 9.9.2004 had been dismissed. Counsel submits that the liberty granted by the learned Single Judge under its order dated 14.12.2013 would therefore not relate to any application for condonation of delay in filing an appeal against the Judgment dated 9.9.2004.

6. It has been further submitted that even otherwise the provisions of section 14 of the Limitation Act cannot be drawn by grossly negligent and reckless litigants. It was submitted that the petitioner company is a big corporate entity, obviously with a huge and active legal department which was only required to peruse the Act of 1936 for information that the order passed by the Payment of Wages Authority was appealable under section 17 of the Act of 1936. It has been submitted that not having done the same, the petitioner company obviously was enormously negligent, in-fact recklessly and uncondonably so. The provisions of Section 14 of the Limitation Act could not be invoked by it in the circumstances to overcome delay of over 8 years and 3 months. The delay could not be condoned for various reasons; (i) the delay was over 8 years and 3 months in respect of an issue of wages of casual employees/workers was inordinate; (ii) the Hon"ble Apex Court had held that the liberal approach of the courts is confined to the situations where the delay is for small periods; (iii) the negligence on the face of it in filing a writ petition and not an appeal is not condonable even in terms of Section 14 of the Limitation Act; and (iv) even otherwise the challenge in the writ petition was the order dated 13.6.2005 and not the judgment dated 9.9.2004 in respect of which the statutory appeal was filed. And therefore, even a purported implicit direction of the Court to condone the delay in filing the appeal and hear it on merits would not attract to the facts of the case.

7. Heard the counsel for the petitioner and the respondents workmen.

8. Admittedly the case at hand relates to payment of due wages to casual workers. The Judgment dated 9.9.2004 passed by the Payment of Wages Authority was appealable. In-stead laying of a misdirected writ petition for a big corporate house with access to the best legal advisors is inexcusable. The Hon"ble Supreme Court *Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others*, AIR 2011 SC 2161 : (2011) 5 SCALE 423 : (2011) 5 SCC 607 : (2011) 7 SCR 468 : (2011) 4 UJ 2475 : (2011) AIRSCW 3033 : (2011) 3

Supreme 569 has held that approaching a wrong Forum is not in all circumstances a good ground for condonation of delay. IN any event condonation of delay is a matter of discretion, no doubt judicially exercised. In the facts of the case for reasons recorded by the Appellate Authority in its impugned order, the refusal to condone delay of over 8 years in filing a statutory appeal, the dismissal of the application for condonation of delay and consequently the appeal is neither perverse nor vitiated by misdirection in law. The Judgment relied upon by the counsel for the petitioner turned on their own facts, and are not apposite to the case at hand.

9. I find no force in the petition. Accordingly dismissed.