(1997) 09 AP CK 0074

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 151 of 1996

Gram Panchayat Committee, Potharam (V), Mallial Mandal, Karimnagar District — APPELLANT

Vs

Gaddam Lingaiah — RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:
Limitation Act, 1963 — Section 5
Payment of Wages Act, 1936 — Section 17

Citation : (1997) 6 ALT 112

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : P.V. Narayana Rao, for the Appellant;

Judgement

D.H. Nasir, J.—The controversy between the parties lies in a very narrow compass in this Revision Petition inasmuch as the issue whether delay if any in taking Execution Proceedings could be condoned under the provisions of Section 5 of the Limitation Act which categorically excludes Execution Proceeding under Order XXI of the Civil Procedure Code, with greater emphasis on the proposition that no delay had taken place.

2. The learned Counsel for the Petitioner vehemently urged that the proceedings under the Payment of Wages Act, 1936 (for short ''the Wages Act'') were not excluded from the purview of Section 5 of the Limitation Act and, therefore, there was no reason why it should be tagged with the provisions of Order XXI of C.P.C., for precluding the petitioner from taking advantage of the said provisions.

3. The learned Counsel for the petitioner also drew my attention to Section 29(2) of the Limitation Act which provides that "where any special or local law prescribed for any suit, appeal or application, a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application

by any special or local law, the provisions contained in Sections 4 - 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

4. A question arose before the Madras High Court in Annamalai Chetti v. Col J. G. Cloete ILR 1983 Mad 189 Section 25 of the Madras Boundary Act XXVIII of 1860 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 the question arose when the time would begin to run. The Supreme Court was also concerned with this question in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . The Supreme Court took into consideration that the High Court held that the time would begin to run only from the date on which the decision was communicated to the parties. If there was any decision at all in the sense of the Act, it could not be the date earlier than the date of communication to the parties, otherwise they might be barred of their right of appeal without any knowledge of the decision having been passed. Adopting the same principle a similar construction had been placed by the Madras High Court in Swaminathan alias Chidambaram Pillai Vs. Lakshmanan Chettiar and Another, on the limitation provisions contained in Sections 73(1) and 77(1) of the Indian Registration Act XVI of 1908. It was held that 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 sections means within thirty days after the date on which the communication of the order reached the parties affected by it. These decisions, as held by the Supreme Court, show that 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, the making of the order must mean either actual or constructive communication of the said order to the party concerned.

5. In Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, the Supreme Court was concerned with the interpretation of Section 29(2) of the Limitation Act. The Supreme Court took note of the fact that Section 18 of the Kerala Rent Act provided for a limitation different from the period prescribed by the Schedule to the Limitation Act which did not contemplate any period of limitation for filing of appeal before the Appellate Authority. The Supreme Court observed that it was well settled that a situation wherein a period of limitation was prescribed by a special or local law for an appeal or application and for which there was no provision made in the schedule to the Act, the second condition for attracting Section 29(2) would get satisfied. As laid down by a majority decision of the Constitution Bench of the Supreme Court in the case of Vidyacharan Shukla Vs. Khubchand Baghel and Others, , when the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribed time limit for it, it could be said that under the first schedule of the Limitation Act all appeals could be filed at any time, but the special law by limiting it, provides

for a different period. While former permitted the filing of an appeal at any time, the latter limited it to be filed within the prescribed period. It was, therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation for a particular proceeding under the Limitation Act.

6. In para 11 of the aforesaid ruling, the Supreme Court observed that once the aforesaid two conditions were satisfied Section 29(2) on its own force would get attracted to appeals filed before appellate authority u/s 18 of the Rent Act. When Section 29(2) applied to appeals u/s 18 of the Rent Act for computing the period of limitation prescribed for appeals under that Section, all the provisions of Sections 4 - 24 of the Limitation Act would apply. Section 5 being one of them would therefore get attracted. It was also obvious that there was no express exclusion anywhere in the Rent Act taking out the applicability of Section 5 of the Limitation Act to appeals filed before appellate authority u/s 18 of the Act. Consequently all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in the light of Section 29(2) of Limitation Act could be said to have been satisfied. That was the view taken by the minority decision of the learned Single Judge of Kerala High Court in Jokkim Fernadez Vs. Amina Kunhi Umma, . A majority did not agree on account of its wrong supposition that appellate authority functioning u/s 18 of the Rent Act was, a persona designate. Once that presumption was found to be erroneous as discussed earlier, in the aforesaid ruling, it became at once clear that the minority view in the said decision was the correct view and the majority view was an erroneous view.

7. This question also fell for consideration of learned Single Judge of this High Court in the case of Surya Prakash and Others Vs. Md. Younus and Others, . Para 3 of the said ruling deals with the issue with which we are confronted in the present CRP and the same is reproduced below :-

It is unnecessary to deal with the question whether the ratio of the Full Bench Judgment which concerned itself with the powers of the Labour Court under A.P. Shops and Establishment Act is applicable to the present case and whether the earlier decisions of this Court must be deemed to have been overruled by the Full Bench. The recent judgment of the Supreme Court furnishes a complete answer to the issue on hand. The issue is no more res integra in view of that decision. But, on utterly untenable grounds, the appellate authority distinguished the judgment of the Supreme Court and declined to follow the same, though it is a direct decision rendered with reference to an analogous enactment. In order to dispel the doubts in regard to the applicability of the latest judgment of the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, and to expose the untenability of the reasoning of the appellate authority, what all is required to be done is an analysis and reiteration of the principles laid down in the said judgment of the Supreme Court."

8. The learned Single Judge of this High Court in the aforesaid decision further

observed in para 5 that :-

"Just as in the present case, there, the Kerala High Court held that application for condonation of delay was not maintainable before the Appellate Authority. The Supreme Court disapproved that view and concluded as follows :-

As a result of the aforesaid discussion, it must be held that appellate authority constituted u/s 18 of the Kerala Rent Act, 1965, functions as a Court and the period of limitation prescribed therein u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 - 24 of the Limitation Act, 1963. Such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the applicant concerned for the delay in filing such appeals. The decision rendered by the High Court in the present case as well as by the appellate authority taking contrary view are quashed and set aside. The proceedings are remanded to the Court of the appellate authority, that is, District Judge/Thalassery. Rent Control Appeal No. 9 of 1994 filed before the said authority by the appellant is restored to its file with a direction that the appellate authority shall consider I.A. No. 56 of 1994 filed by the applicant for condonation of delay on its own merits and then proceed further in accordance with law."

9. Section 17 of the Payment of Wages Act, 1936 relating to Appeal provides in its sub-section (1) as follows :-

"17. Appeal - (1) An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of Section 15, or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred, within thirty days of the date on which the order or direction was made, in a Presidency Town before the Court of Small Causes and elsewhere before the District Court :-

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of Section 15 if the total amount of wages claimed to have been with held from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-section (4) of Section 15."

10. While, therefore, there could be no doubt about the fact that the applicability of Section 5 of the Limitation Act was not excluded to appeals u/s 17 of the Payment of Wages Act, 1936 having regard to the principles explained in the above rulings cited by the learned Counsel for the petitioner, a note is required to be taken of the fact that the period of limitation of thirty days for filing appeal commences from the date on which the order or direction is communicated to the parties concerned. The learned Counsel for the petitioner pointed out that the petitioner received the order, as stated in the affidavit in I.A. No. 539/95, only on 1-5-1995 in spite of the fact that the order in question was dated 13-3-1995. The order was received by the petitioner through registered post. The envelope in which the order was received by the petitioner contained 1-5-1995 as the date on which the same was delivered to the petitioner and, therefore, according to the learned Counsel for the petitioner, the limitation for preferring the appeal commenced from 1-5-1995 and not from 13-3-1995 and that the appeal was filed on 9-5-1995 which was well within the period of limitation prescribed by law. There is a good deal of substance in the submission made by the learned Counsel for the petitioner on this aspect and it is surprising that the learned District Judge, Karimnagar, without going into the merits of the question whether the appeal was filed in time or not merely dismissed the appeal by a one line order that "petition dismissed as section 5 has no application to Payment of Wages Act."

11. From the above discussion, it clearly emerges that the applicability of Section 5 of the Limitation Act was not excluded to appeals under Payment of Wages Act, 1936. Even if it is believed that Section 5 of the Limitation Act was not applicable, the bar of limitation still does not come in the way of the petitioner by virtue of the fact that the period of limitation u/s 17 of the Payment of Wages Act commences not from the date of the order but from the date on which the order was communicated to the party concerned and in that view of the matter, the appeal filed by the petitioner on 9-5-1995 after the order in question was received by the petitioner on 1-5-1995 was well within the limitation prescribed by law.

12. The C.R.P. is therefore, allowed and the impugned order passed by the learned District Judge, Karimnagar, in I.A. No. 539/95 in unregistered C.M.A. of 1995 in C.F. No. 654 of 1995, dated 12-12-1995 is quashed and set aside. No costs.

