
(2010) 05 MP CK 0052
In the Madhya Pradesh High Court
Case No : M.A. No. 2531 of 2009

Harishankar

APPELLANT

Vs

Shambhu Singh and Others

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2011) ACJ 486 : (2011) 2 TAC 108

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Sunil Jain, for the Appellant; Manish Jain, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Maheshwari, J.—This appeal has been filed on 17.8.2009 against the impugned award dated 30.11.2005 passed in Claim Case No. 22 of 2004 after the delay of about 1355 days along with an application u/s 5 of Limitation Act, wherein it is stated that the Appellant is an uneducated person and not conversant with the niceties of law. It is said that on receiving summons of claim petition, he had immediately contacted his counsel at Chittorgarh in Rajasthan and requested him to take appropriate steps in the matter at Jaora, Distt. Ratlam in M.P. On the advice of his counsel he had not appeared before Claims Tribunal, but filed the written statement prepared by the advocate and sent it by registered post. In the claim petition the Tribunal proceeded ex parte against him and passed the impugned award making the Appellant liable for payment. It is said that Appellant was not aware of the final award, but when the execution proceeding has been filed and the notice in those proceedings has been served on Appellant, then only certified copy of award and the documents were obtained and on engaging the counsel at Indore this appeal has been filed. In the meantime, delay of 1355 days has occurred, however, it is said that delay in filing of appeal is bona fide and deserves to be condoned.

2. By filing the reply, the claimants-Respondents have stated that in the

application it has not been mentioned that on what date the Appellant has received the notice of execution proceeding, thereafter on which date he has applied for obtaining the certified copy. He has also not specified that on which date certified copy was obtained and on which date he has contacted his counsel at Indore. The date of knowledge has also not been mentioned by the Appellant in application or in the affidavit however it is apparent that he has failed to show any satisfactory reason to condone inordinate delay of 1355 days in filing the appeal. In view of the aforesaid, it is urged that the application filed by the Appellant may be ordered to be dismissed.

3. Mr. Sunil Jain, learned Counsel for the Appellant has submitted that the notice of execution proceedings was issued by the court on 15.7.2009 for the date fixed in execution on 25.8.2009 and the appeal has been filed by the Appellant on 17.8.2009, however, it should be inferred that immediately on receiving the notice he has filed this appeal, i.e., from the date of knowledge of passing the award, which he has come to know by way of summons issued by the executing court, therefore, the delay in filing the appeal is bona fide and liable to be condoned. It is further contended by him that the Appellant has acted bona fide on the advice of advocate, however, he should not be left to suffer for the fault of advocate, who has given wrong advice. It is further contended by him that by condoning the delay appeal may be remitted back to trial court with the permission to Appellant to contest the claim on merit.

4. On the other hand, Mr. Manish Jain, learned Counsel appearing on behalf of the Respondents submits that the execution proceeding is pending since long, but notice has yet not been served upon the Appellant. It is further contended by him that he has ascertained the said facts from local counsel of Jaora Mr. Ashok Shethia a day before yesterday. In that view of the matter, it is urged that whatever oral submissions as made by the learned Counsel for the Appellant is without any basis. It is further contended by him that if those notices have been received by the Appellant on a particular date, he should have mentioned all those facts in the application and affidavit also. It is also contended that the copy of notice, if any, received has not been filed before this Court, and also not referred in the application of condonation of delay. However, oral arguments cannot be considered. In view of the said submissions it is urged that the delay of 1355 days in filing the appeal is not bona fide and this appeal may be dismissed as time-barred.

5. After having heard learned Counsel for the parties and on perusal of the records, it is not in dispute that the impugned award has been passed on 30.11.2005 and this appeal has been filed on 17.8.2009 after the inordinate delay of 1355 days, while the period of limitation as prescribed is 90 days. It is also not in dispute that notice of claim case has been served on the Appellant (Respondent No. 3) and after service of notice he had not appeared before the court and as per the pleadings, on the advice of advocate he has merely sent the written statement to the court as he may not be liable to pay compensation for

accident, if any, taken place. On perusal of the impugned award it is clear that such written statement has been sent directly to the date fixed for 12.1.2005 before the Claims Tribunal and thereafter up to passing the impugned award the Appellant has not taken care to find out what was the judgment in the said case. After passing the impugned award on 30.11.2005 why he was unaware of it and no explanation has been given so far. It is very surprising that up to such a long time Appellant himself or through advocate has not made any endeavour to know about the fate of the case in which summons were served upon him; no explanation to such effect is available on record. The argument of Mr. Sunil Jain regarding knowledge of award from the date of service of summons of executing court dated 15.7.2009 is not acceptable, because summons served, if any, has not been produced and the pleading of service of summons of a particular date is also not available on record. Once the Appellant comes forward with a plea that from the date of knowledge appeal has been filed, within the period of limitation he will have to substantiate those contentions by filing some documents and material on record to show his bona fide, in this case no such document is available. On being asked by the court whether any step has been taken against advocate to his wrong advice given to the applicant, it is said, no steps have been taken against him. In such circumstances, it cannot be accepted that inordinate delay in filing the appeal is based on bona fide. In the opinion of this Court, no plausible explanation of delay is available why the Appellant has not appeared before the court and why after passing the award in November 2005, steps have not been taken. In absence of any material the plea of filing of appeal from the date of notice of service of summons of executing court is not acceptable. It is to be noted here that from the date of knowledge of summons has not been cleared in the application and from the said date day-to-day delay has also not been made, therefore, in the opinion of this Court delay in filing of appeal is not on bona fide reason. Accordingly, this appeal is dismissed as time-barred.