
(2009) 11 GAU CK 0048
In the Gauhati High Court

Hrishiraj Sharma and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Hindu Marriage Act, 1955 — Section 10, 11, 12, 13, 14
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : AIR 2010 Guw 31 : (2010) 2 GLR 442 : (2009) 5 GLT 569

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.B. Saha, J.—This writ petition is filed by the petitioners for quashing the order dated 7-3-2009 passed by the appellate authority, the respondent No. 4 herein, in appeal case No. 13/Apl/Secy/Rev/07 whereby and whereunder the said appellate authority disallowed the prayer for condoning the delay in filing the appeal petition and dismissed the appeal petition on the ground that as per the provisions of Section 93(1)(c) and) 94(1)(a) of the TLR and LR Act, 1960, no appeal shall lie after the expiry of 30 days from the date of the order appealed against.

2. Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Mr. P. Chakraborty, learned Counsel for the petitioners as well as Mr. N. C. Pal, learned Govt. Advocate appearing on behalf of the State respondents 1, 3 and 4. Also heard also Mr. A. Lodh, learned Assistant S. G. appearing for the respondent-Union of India.

3. In the instant writ petition, an interested question falls for consideration as to whether an appeal can be filed before the appellate authority against the order of the Collector after expiry of thirty days from the date of order appealed against as per the provisions of TLR and LR Act with the aid of Section 5 of the Limitation Act read with the provisions of Section 29(2) of the Limitation Act, 1963.

4. For proper decision of the case, the pleaded case of the petitioners, in short, is required to be looked into.

The petitioner No. 1 and the mother of the petitioner No. 2 were given jote settlement by the then Maharaja of Tripura for a land measuring 4 drones 6 kanis under Kayemi Taluk No. 204 at mouza Sal Bagan No. 30. After the jote settlement they were given possession, but at one point of time, they could not keep constant vigilance over the said land as the petitioner No. 1 being a businessman had to remain outside the State of Tripura very frequently and the mother of the petitioner No. 1 being an orthodox Hindu widow did not like to involve herself to the said matter after a particular age. In 1990, the mother of the petitioner No. 1 and the petitioner No. 1 being jotedars found that their land has been recorded in khas khatian behind their back though they paid revenue for the said land to the Maharaja before enactment of TLR and LR Act, 1960. They therefore filed a petition u/s 11(3) of the said Act before the Collector, West Tripura for re-recording their names in the khatian by deleting the name of the State Government and the said case was numbered as Rev. Case No. 35 of 1990. The Collector, the respondent No. 3 herein, after hearing the parties dismissed the aforesaid revenue case on the ground of non-production of some documents. It is contended that the petitioner No. 1 appointed one attorney for conducting their case, but the said attorney did not inform the petitioners in time that the said petition was dismissed on 16-5-1998. In the result, the petitioners could not file the statutory appeal u/s 93 of the TLR and LR Act, 1960 in time. On 25-7-2000, the petitioner No. 1, appellant No. 1 herein, came to Agartala and wanted to know the latest position of the revenue case from his attorney, but being unable to collect the latest information from him, he engaged an Advocate for taking necessary information regarding the said revenue case. Ultimately, the said Advocate informed him regarding the order of dismissal dated 16-5-1998. Certified copy of the said order dated 16-5-1998 was obtained and on receipt of the same, the petitioner appellant No. 1 contacted with the petitioner appellant No. 2. Thereafter, discussion was held between them and they have decided to prefer appeal against the order of dismissal dated 16-5-1998. They also appointed an Advocate to prepare the appeal for filing it before the Appellate Authority. Ultimately, the appeal was filed on 28-8-2000 along with an application for condoning the delay as by this time, a delay of 2 years 3 months and 12 days was occurred. Hence, delay condonation petition was also filed along with the appeal u/s 5 of the Limitation Act, 1963 read with Rule 125 of the TLR and LR Rules, 1960 for condoning the delay.

5. The said appeal was taken up by the statutory appellate authority along with condonation application on 7-3-2009 after about 8 years from the date of filing of the appeal. On hearing the parties, the appellate authority passed the order impugned herein. Being aggrieved by the said order, the petitioners filed the present writ petition.

6. The State respondents 1, 3 and 4 by filing counter-affidavit denied the

contention made in the writ petition by the petitioners. It is contended that the petitioners without exhausting the statutory provisions as provided under the TLR and LR Act approached this Court under the writ jurisdiction which is not permissible in law. It is further contended that against the order passed by the District Collector on 16-5-1998, an appeal was preferred before the Principal Secretary, Revenue, Government of Tripura, Agartala, the appellate authority, the respondent No. 4 herein, u/s 93(1)(c) of the TLR and LR Act after two years three months twelve days with a condonation petition for delay in filing the said appeal which was disposed of on 7-3-2009 disallowing the appeal holding that the delay occurred for filing the appeal is not justified and as per the Act, the appeal could be preferred within one month after the judgment/order passed by the District Collector, but the petitioners failed to do so inasmuch as there is no provisions in the TLR and LR Act for condoning the delay in preferring the appeal and the statute expressly prohibits in filing the appeal with the aid of Section 5 of the Limitation Act after thirty days of the order appealed against. Therefore, the petition u/s 5 of the Limitation Act read with Rule 125 of the TLR and LR Rules filed by the petitioners before the appellate authority was misconceived and very rightly the statutory appellate authority rejected the prayer for condoning the delay and consequent thereto dismissed the appeal.

7. The Union respondents did not file any counter-affidavit controverting the contentions made in the writ petition.

8. Mr. S. M. Chakraborty, learned senior counsel for the petitioners while attacking the impugned order passed by the respondent No. 4, the appellate authority, would contend that the appellate authority misconstrued the provisions of TLR and LR Act, particularly, Section 94 of the Act. In Section 94 of the TLR and LR Act, the Legislature only provided the period for limitation of filing an appeal within thirty days though used words "no appeal (first appeal) shall lie after expiry of thirty days from the date of the order appealed against". He also contended that Section 94(2) is almost para materia of Section 12(2) of the Limitation Act, 1963 as in the said provisions it is stated, inter alia, "in computing the above periods, the time required to obtain copies of the order appealed against shall be excluded." But by way of express provision, the Legislature did not exclude the scope for extension of period of limitation on extraordinary circumstances and even not expressly excluded applicability of Section 5 of the Limitation Act. Mr. Chakraborty again contended that when the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law though prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act, all appeals can be filed at any time. But the special law by limiting it provides for a different period. When the former permits filing of an appeal at any time, but the special law prescribes a particular limitation for preferring an appeal, the Court is to consider whether Section 29(2) of the Limitation Act would apply even in a case where differences between the special law and the General law like Limitation Act arose by the omission to provide for a limitation to a particular proceeding under the

Limitation Act. He specifically stated that when a statute does not exclude the application of Limitation Act expressly, then a justice seeker has a right to file an appeal taking aid of Section 5 of the Limitation Act and in support of his aforesaid contention, he placed reliance on a decision of the Apex Court in the case of Smt. Lata Kamat Vs. Vilas, particularly paras 11 and 12. The relevant portion of Paras 11 and 12 are reproduced hereunder as the same would be profitable for decision in this case.

11. ...Clause (2) of this Section provides that where the limitation provided by the special or local law is different from the period prescribed by the Schedule, the provisions of Section 3 will apply. In the Hindu Marriage Act, the period of appeal is prescribed. In the schedule under the Limitation Act, there is no provision providing for an appeal under the Hindu Marriage Act. Thus the limitation prescribed under the Hindu Marriage Act is different and is not prescribed in the Schedule. Thus the provisions of Section 3 shall apply and therefore it is clear that to an appeal or application the provisions contained in Sections 4 to 24 shall apply, so far and to the extent to which they are not expressly excluded by the special or local law and Clause (3) of this Section provides that the provisions of this Act shall not apply to any suit or other proceedings under any marriage laws. It is therefore clear that so far as Clause (3) is concerned, the impact of it will be that the provisions of the Limitation Act will not apply so far as a suit or an original proceeding under the Act is concerned but Clause (3) will not govern an appeal.

12. ...

Now it has been held that the test of a "prescription of a period of limitation different from the period prescribed by the First Schedule" as laid down in Section 29(2), Limitation Act, 1963 is satisfied even in a case where a difference between the special law and Limitation Act arose by omissions to provide for a limitation to a particular proceeding under the Limitation Act, see *The Canara Bank Ltd. Vs. The Warden Insurance Co. Ltd.*, approved by the Supreme Court in *Vidyacharan Shukla Vs. Khubchand Baghel and Others*,

Once the test is satisfied the provisions of Sections 3, 4 to 24, Limitation Act, 1963 would at once apply to the special law. The result is that the Court hearing the appeal from the decree or order passed under the Hindu Marriage Act would u/s 3 of the Limitation Act have power to dismiss the appeal if made after the period of limitation of 30 days prescribed therefore by the special law. Similarly u/s 5 for sufficient cause it will have the power to condone delay. Likewise u/s 12(2) the time spent in obtaining a certified copy of the decree or order appealed from will be excluded. If it is so, Section 12(2) of the Limitation Act is attracted, and the appellants in all the three appeals will be entitled to exclude the time taken by them for obtaining certified copy of the decree and order. The appeals are, therefore, within time.

9. He also relied on a decision of the Apex Court in the case of *Mukri Gopalan Vs.*

Cheppilat Puthanpurayil Aboobacker, On reliance of the aforesaid decision of the Apex Court, he finally contended that though the mother of the petitioner No. 1 filed the appeal in the year 2002 before the appellate authority along with an application u/s 5 of the Limitation Act read with provisions of Rule 125 of the TLR & LR Rules, but the appellate authority decided the said application for condonation of delay almost after eight years on 7-3-2009 after misinterpretation of the provisions of Section 94 of the TLR & LR Act and thus rejecting the prayer which was wholly unjustified and unfair and denial of justice to the justice seeker.

10-11. Mr. Lodh, learned Assistant S.G. appearing for the respondent-Union of India while resisting the contention of Mr. Chakraborty contended that Section 93 of the TLR & LR Act is the provisions for appeal and Section 94 of the TLR & LR Act prescribes the period of limitation, particularly, the limitation for preferring the first appeal is thirty days from the date of order appealed against and no appeal can be preferred after thirty days as the Legislature intended that the Revenue proceedings should be completed within a particular period and there should not be any extension of time more than the period prescribed by the statute. He also contended that Legislature prescribed a particular period of limitation in the Act itself and it would not be proper for the Court to go beyond the prescription and also to take aid of Section 29(2) of the Limitation Act as the same is expressly barred according to the TLR & LR Act.

12. Mr. Lodh also submits that the petitioners in this case did not challenge the vires of the Act. He further contended that though not the same, but the similar provisions are there in Section 34(3) of the Arbitration and Conciliation Act, 1996. Referring to the proviso of Section 34(3), Mr. Lodh contended that there is a decision from the Apex Court that when a time limitation is prescribed under a statute, the same is unextendable and Section 5 of the Limitation Act has no application. In support of his aforesaid contention, he relied on a decision of the Apex Court in the case of Union of India Vs. M/s Popular Construction Co., wherein the Apex Court taking note of the provisions of Section 34(3) noted that "As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result." The Apex Court has also noted that "apart from the language, "express exclusion" may follow from the scheme and object of the special or local law. "Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation, Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

13. Mr. N. C. Pal, learned Govt. Advocate has echoed in the same line. He did not raise any other question except the point raised by Mr. Lodh.

14. Mr. Chakraborty, learned senior counsel for the petitioners in response to the submissions of Mr. Lodh submits that if the Court would look to Section 34(3) of the Arbitration and Conciliation Act, 1996, then the Court would find that in Sub-section (3) of Section 34, the Legislature prescribed the period of limitation for setting aside the arbitral award and by way of incorporating the proviso in the said sub-section, the Legislature also provided a period of extension of such limitation. But in the TLR & LR Act, there is no such provisions for extension of time for preferring an appeal, even when a person is prevented by sufficient cause from filing an appeal within the prescribed period of limitation of thirty days. Mr. Chakraborty also contended that it is not necessary for the petitioners to challenge the vires of the provisions of Section 94 of the TLR & LR Act as the said provisions do not affect the petitioners and none of the rights of the petitioners are taken away, rather the provisions are totally silent regarding the application of the provisions of the Limitation Act.

15. I have heard the argument raised by the learned Counsel for the parties and also perused the relevant records available and also perused the law reports cited. Before discussion of the submissions of the learned Counsel for the parties, it would be proper for this Court to consider certain provisions of the TLR & LR Act as that would help for proper adjudication of the matter in dispute.

16. There are 15 chapters in the TLR & LR Act. Chapter VIII deals with the procedure of revenue officers; appeals and revisions. If we travel through the provisions of Section 81 of the said Act, we will see that the Revenue Officers are treated as a revenue Court and Section 85 also empowered those Revenue Officers to take evidence and summon the witnesses. Rule 125 of the TLR & LR Rules also says, inter alia, that subject to provisions of the Act and these rules, the CPC 1908 shall, as far as may be, apply to all or any of the proceeding taken by any revenue Court under the Act. Sections 93 and 94 of the TLR & LR Act require a special look by the Court as the interpretation of those provisions have been called for in the instant proceedings. Therefore, the aforesaid Sections are quoted here-under:

93. (1) Save as otherwise expressly provided, an appeal shall lie from every original order passed under this Act,:

(a) If such an order is passed by an officer subordinate to the sub-divisional officer, to the sub-divisional officer;

(b) If such an order is passed by the sub-divisional officer, to the Collector;

(c) If such an order is passed by the Collector, to the State Government;

(d) If such an order is passed by an assistant survey and settlement officer, to the survey and settlement officer or to a revenue officer notified by the State Government in the Official Gazette to be the appellate authority; and

(e) If such an order is passed by a survey and settlement office, to the director of settlement and land records or to a revenue officer notified by the State Government in the Official Gazette to be the appellate authority.

(2) A second appeal shall lie against any order passed in first appeal,:

(a) if such an order is passed under Clause (a) of Sub-section (1), to the Collector;

(b) if such an order is passed under Clause (b) of Sub-section (2), to the State Government;

(c) If such an order is passed under Clause (d) of Sub-section (1) to the director of settlement and land records or to a revenue officer notified by the State Government in the Official Gazette to be the second appellate authority; and

(d) If such an order is passed under Clause (e) of Sub-section (1), to the State Government.

94. (1) No appeal shall lie,-:

(a) in the case of a first appeal, after the expiry of thirty days from the date of the order appealed against; and

(b) in the case of a second appeal, after the expiry of sixty days from the date of the order appealed against.

(2) In computing the above periods, the time required to obtain copies of the order appealed against shall be excluded.

17. On going through the provisions of Section 93 of the TLR & LR Act, this Court is of considered opinion that no second appeal shall lie against the order passed u/s 93(1)(c) of the TLR & LR Act. Second appeal shall lie only against the order passed under Sub-clause (a) of Sub-section (1), Sub-clause (b) of Sub-section (2), Sub-clause (b) of Sub-section (1) and Sub-clause (e) of Sub-section (1) of Section 93 of the TLR & LR Act. In the instant case, the appeal was preferred under Sub-clause (c) of Sub-section (1) of Section 93, therefore, no second appeal shall lie against the impugned order passed by the statutory appellate authority, the respondent No. 4 herein. Section 94 of the TLR & LR Act only prescribes the period of limitation for preferring the appeal, but in nowhere in TLR & LR Act, the Legislature either expressly excluded the application of provisions of Limitation Act or impliedly excluded the same. It is also admitted position that there is no provisions in Sections 93 and 94 of the TLR & LR Act like provisions of Section 34(3) of the Arbitration and Conciliation Act, wherein it has been prescribed the initial period for limitation in preferring an application for setting aside the arbitral award and also allowed the Court to extend the period for thirty days if the Court is satisfied that the appellant was prevented by sufficient cause from making an application within the aforesaid period of three months of normal limitation period. Therefore, this Court is of considered opinion that the decision of the Apex Court in M/s. Popular Construction Company (AIR

2001 SC 4010) (supra) has no application in the present case though from the Bar it has been submitted that the said decision is now before the larger Bench of the Apex Court for consideration.

18. It is also settled that even if a decision of the Apex Court laid down the proposition of law and it is placed before the larger Bench of the Apex Court, unless the same is set aside, the decision is a precedent. But in the instant case there is difference between the provisions Sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996 and Section 94 of the TLR & LR Act. Therefore, the interpretation of Sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996 by the Apex Court cannot be treated as precedent for interpreting Section 94 of the TLR & LR Act.

19. In *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, while the Apex Court considered the provisions of Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965, examined a similar question that falls for consideration in the instant case. The Sub-clause (b) of Sub-section (1) of Section 18 stated, inter alia, "any person aggrieved by an order passed by the Rent Control Court, may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction in computing the thirty days aforesaid the time taken to obtain a certified copy of the order appealed against shall be excluded." The Apex Court after taking consideration of the aforesaid provisions held that "it is also obvious that there is 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 can be said to have been satisfied."

20. This Court has also considered the decision of the Apex Court in *Smt. Lata Kamat Vs. Vilas*, wherein while examining the provisions of Section 15 as well as Section 28 of the Hindu Marriage Act, the Apex Court noted that the schedule in the Limitation Act do not provide for an appeal under the Hindu Marriage Act but it is only provided in Clause (4) of Section 28 of the Hindu Marriage Act. Thus the limitation provided in Clause (4) of Section 28 is different from the Schedule of the Limitation Act. According to Clause (2) of Section 29, provisions contained in Sections 4 to 24 will be applicable unless they are not expressly excluded. It is clear that the provisions of the Act do not exclude operation of provisions of Sections 4 to 24 of the Limitation Act and therefore, it could not be said that these provisions will not be applicable. As in the TLR & LR Act also, the Legislature has not prescribed any clause of exclusion of operation of provisions of Limitation Act, this Court is of considered opinion that provisions of Section 3 of the Limitation Act shall apply. Therefore, to an appeal or an application, the provisions contained in Sections 4 to 24 of the Limitation Act shall apply and, particularly, as the provisions of Section 5 of the Limitation Act is within the provisions of Sections 4 to 24, it can be easily held by this Court that the said Section 5 of the Limitation Act is applicable when an appeal is preferred u/s 93 of

the TLR & LR Act subject to sufficient cause for delay in preferring the appeal is explained.

21. For the foregoing reasons and discussion, the writ petition is allowed. Consequently, the impugned order dated 7-3-2009 passed by the appellate authority in Appeal Case No. 13/Apl/SECY/Rev/07 is set aside. The matter is remanded back to the appellate authority for consideration of the prayer for condonation of delay afresh keeping in mind the observation of this Court as stated supra and disposal of the appeal on merit expeditiously in accordance with law. No order as to costs.