
(2009) 05 DEL CK 0137

In the Delhi High Court

Case No : LPA 227 of 2009 and CM No's. 7224-7226 of 2009

Jayaswal Neco Industries Ltd.

APPELLANT

Vs

Tata Steel Ltd. and Others

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 05 DEL CK 0137

Hon'ble Judges : A.P. Shah, C.J; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Paramjit Singh Patwalia, Devashish Bharuka and Tushar Bakshi, for the Appellant; Tata Steel Ltd. and Ors., for the Respondent

Judgement

1. The present appeal arises out of order of the learned single Judge dated 27.4.2009. Briefly stated the facts of the case are as follows.

2. The respondent No. 1 (original petitioner No. 1 in the writ petition) had entered into an MOU with the State of Chhattisgarh for establishing a steel plant. The respondent No. 1 applied for grant of mining lease in respect of certain areas. These applications overlapped with some of the area for which the appellant had applied for a mining lease. The State rejected the respondent No. 1's application on several counts. The application of the appellant was also rejected. The State Government by another order rejected the respondent No. 1's application for prospecting licence. The appellant in the meanwhile challenged the order of rejection through a revision petition before the Tribunal which was allowed vide order dated 28.9.2007. The respondent No. 1 at this stage moved the Delhi High Court by filing writ petition 9260/2007 contending that the Tribunal had wrongly granted preferential rights to appellant and that the same had a direct bearing on its rights. It also challenged in the said writ petition rejection of its mining lease application. However, later the respondent No. 1 on 9.1.2008 filed a revision petition before the Mines Tribunal challenging the order dated 31.1.2007 passed by the State Government rejecting its mining

application. The order in that revision petition is the subject matter of the present writ petition out of which this appeal arises. The Mines Tribunal on 29.5.2008 admitted respondent No. 1 revision petition. The revision petition of the respondent No. 1 was admitted subject to the exclusion of the area covered in the revision petition of the appellant which was disposed of by its earlier order dated 28.9.2007. The respondent No. 1 challenged the limited admission of its revision petition before this Hon"ble Court vide writ petition 5780/2008. Vide order dated 11.8.2008 this Hon"ble Court disposed of the writ petition setting aside that portion of the order of the Mines Tribunal that excluded the area covered under the revision application filed by the appellant with a direction to the Mines Tribunal to hear all the parties on this aspect of the matter after issuing notice to all the parties concerned. The appellant also filed a writ petition being WP(C) No. 6298/2008 in respect of the very same order by the Tribunal dated 29.5.2008 by which the Tribunal had admitted and issued limited notice in the respondent No. 1's revision petition. The respondent contention was that the Tribunal could not have admitted the revision petition of respondent No. 1 without first considering impleadment application of the appellant. The impugned order of the Mines Tribunal was consequently quashed. This Court was pleased to dispose of the writ petition filed by the respondent No. 1 directing the Mines Tribunal to consider the application for impleadment of the appellant after giving notice to all the concerned parties.

3. In the meanwhile the respondent No. 1's writ proceedings being 9260/2007 which had challenged the order of the State Government rejecting its mining lease application was considered on 13.1.2009 when a Division Bench of this Court permitted the respondent No. 1 to move an application for impleadment before the Mines Tribunal. The Mines Tribunal heard the parties including respondent No. 1 in its revision proceedings along with an application for condonation of delay. It refused to condone the delay and rejected the application. The respondent No. 1 in the writ petition has contended that the Tribunal fell into error in declining to condone the delay occasioned in the filing of the revision petition. Its contention was that in such cases the approach of the Tribunal has to be broad and liberal one.

4. The learned single Judge has observed that both the parties had been repeatedly approaching this Court. The learned single Judge after discussing the law on delay and laches has rightly observed that the Tribunal should have adopted a liberal approach and ought to have condoned the delay. As held by the Supreme Court in *Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others*, in exercising discretion u/s 5 of the Limitation Act the courts should adopt a pragmatic approach. The Court has to exercise discretion on the facts of each case keeping in mind that in construing expression sufficient cause principle of advancing substantial justice is of prime importance. The learned single Judge has rightly noticed the judgment of the Supreme Court in *N. Balakrishnan Vs. M. Krishnamurthy*, wherein it was held that rules of limitation are not meant to destroy the right of the parties. They are meant to see that the

parties do not resort to dilatory tactics but seek their remedy promptly. There is no presumption that delay in approaching the court is always deliberate. Supreme Court further observed in the said judgment that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of dilatory strategy the court must show utmost consideration to the suitor.

5. In the facts of the present case the learned single Judge has correctly come to the conclusion that the Tribunal should have adopted a liberal approach as indicated by the Supreme Court. In the present case equities would be properly balanced if the Tribunal was to consider the rival contentions of the parties and thereafter pass a reasoned order. This is not a case where any irretrievable prejudice will be caused to the appellant if the Tribunal entertains the revision petition of the respondent No. 1 as well.

6. In the light of what has been stated hereinabove the appeal must fail. The appeal is disposed of accordingly. All pending applications also stand disposed of accordingly.