
(2013) 01 AHC CK 0020

In the Allahabad High Court

Case No : First Appeal From Order Defective No. 1155 of 2012

Kamal Ahmad Siddique

APPELLANT

Vs

Deputy Labour Commissioner and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 1 UPLBEC 738

Hon'ble Judges : Vinay Kumar Mathur, J

Bench : Single Bench

Advocate : Kirti Kar Tripathi and Sri Praveen Tewari, for the Appellant; Rajesh Kumar Verma, for the Respondent

Judgement

Vinay Kumar Mathur, J.—I have heard learned Counsel for the applicant-appellant, learned Counsel for the respondents No. 2 to 5 earlier and have perused the record. Factual clarifications taken.

The instant F.A.F.O. has been preferred u/s 30 of the Workmen Compensation Act, 1923(Employees Compensation Act) challenging the Judgment of respondent No. 1 dated 12.12.2011 passed in Case No. 38/WCA of 2007, Raj Kumar Gautam & Others v. Kamal Ahmad Siddiqui.

Since, the appeal has been preferred with delay of time, therefore, an application u/s 5 of the Limitation Act for condonation of delay supported by an affidavit has been moved and notices were ordered and objection against the delay application has been filed on behalf of the respondents No. 2 to 5. Reply of the objection has also been filed by the applicant-appellant.

The relevant facts for disposal of the instant appeal are that the respondents No. 3 to 6 filed an application against the appellant under the provisions of Workmen Compensation Act, 1923 before the respondent No. 1, who, it is stated, was allegedly working as Commissioner under the employees Compensation Act. The respondents No. 3 to 6 claimed that they were the father, mother and sisters of the deceased, Guddu, who was stated to have been employed by the appellant

for painting his house and died in an accident on 1.03.2005 under such employment. It has been contended that Workmen Compensation Commissioners were appointed u/s 20 of the Workmen Compensation Act. The said act was amended and was substituted by a new act known as Employees Compensation Act vide notification published in the gazette of India dated 22.12.2009 and was enforced w.e.f. 18.1.2009. It is also contended by the appellant that after coming into force of the Employees Compensation Act, the appointment of the Commissioners for Workmen Compensation also ceased and the eligibility for such appointment was also changed drastically. No notification under the provisions of Employees Compensation Act was issued for appointment of Commissioners. The State Government issued a notification dated 11.11.2010 whereby the Labour Commissioner, U.P. Kanpur and all the Additional/Deputy Commissioners and Assistant Labour Commissioners, who are either directly appointed or promoted from directly appointed Labour Enforcement Officers and who have completed five years service on the post of Assistant Labour Commissioners. The appellant has contended that on the date of notification dated 11.11.2010, the Workmen Compensation Act, 1923 was not in existence and the notification was thus wrongly issued. The respondent No. 1 has passed the order on 12.12.2011 awarding compensation to respondents. The same being without jurisdiction was void, ab-initio and non-est. The validity of the order dated 23.1.2011, whereby the application of the appellant challenging jurisdiction of respondent No. 1 was rejected has also been assailed. It has been contended that against the order dated 12.12.2011, a writ petition No. 2727(S/S) of 2012 was preferred by the appellant which was dismissed as not pressed on 29.5.2012 by another Bench of this Court with liberty to the petitioner to file a statutory appeal as provided u/s 30 of Workmen Compensation Act, 1923, if he is so advised, subject to law of limitation. The instant appeal has been preferred on 10.12.2012 and for condoning the delay from the date of order till filing of the instant appeal, an application u/s 5 of the Limitation Act has been moved contending that respondents No. 4 & 5 are not the dependants. Admittedly, the deceased met with an accident while painting the house of the appellant. The deceased was not in the employment of the appellant. It has been further contended that the appellant has deposited the entire amount of Rs. 2,86,433/- vide cheque No. 665043 dated 13.9.2012 which has been collected and deposited in the account of respondent No. 1 and the respondent No. 1 has issued a certificate to this effect that the respondent has issued orders for disbursement of the amount. The judgment is bad in law on merits. For providing substantial justice to the parties, the matter may be adjudicated on merits. The appellant was throughout vigilant and whatever delay has been caused is because of the circumstances beyond control of the appellant. The delay of about 299 days has been caused. Even if it is presumed that there was inaction on the part of the appellant, the appellant cannot be held guilty and punished for his inaction in such a harsh manner that he may be deprived of fair justice. The delay in filing the appeal after considering the facts and circumstances of the case, is liable to be condoned by adopting a liberal view.

2. Learned Counsel for the appellant has placed reliance on the Judgment of this Court in the case of Smt. Risalo (D) through L.Rs. v. IInd A.D.J. and Others, wherein Hon''ble Single Judge of this Court has held that when the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

3. In another Judgment of Bombay High Court in S.A. No. 717 of 2011, Parighabai Laxman Turakane v. Ashabi Raosheb Lasure, it has been held that refusing to condone the delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated.

Learned Counsel for the respondents No. 2 to 5 has vehemently opposed the application for condonation of delay and has submitted that respondent No. 2 had filed a Case No. 38/WCA of 2007 before the Deputy Labour Commissioner/ Workmen Compensation Commissioner on his own behalf as well as on behalf of other respondents in which after hearing the parties, a detailed order dated 30.9.2009 was passed. The respondent No. 2 filed the caveat before this Court, but, instead of challenging the said judgment, the appellant filed a recall application which was allowed under the pressure of the appellant. The appellant challenged the jurisdiction of the Commissioner. The respondents filed a detailed reply and the objections thereafter were rejected vide order dated 23.9.2011. Learned Counsel has further contended that after affording full opportunity, the order dated 12.12.2011 was passed on merits under the provisions of Workmen Compensation Act and the respondents again preferred a caveat, but, no appeal was filed.

4. It has also been submitted that a recovery certificate was issued against the appellant against which he preferred a writ petition No. 2727 (S/S) of 2012 on the same ground as have been taken in the instant appeal and the same Counsel was engaged and the writ petition was dismissed on 29.5.2012 vide a detailed order. Now, the instant appeal has been filed with delay and the delay has not been explained.

It has been contended that there is a delay of 340 days in filing the appeal and proper designation of respondent No. 1 has not been given in the appeal. The disbursement of compensation awarded has been deferred after receiving the information of filing of the appeal.

In reply, it has been submitted that there is a delay of 9 months and 10 days in filing the appeal and the same may be condoned so that the appellant may not loose his statutory right to appeal.

5. Considering the facts and circumstances and in view of the submissions made on behalf of the parties, I am of the view that it is true that sufficient cause should be construed liberally and the discretion rests with the Court in respect of the jurisdiction, in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction means to advance substantial justice when no

negligence nor inaction nor want of bonafides is imputable to the appellant as has been held in Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, .

It has been held in M.K. Prasad Vs. P. Arumogam, , that discretion u/s 5 should be to advance the substantial justice. Further, it has been held in various Judgments that no condonation should be allowed due to negligence of the parties as has also been held earlier in G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, .

It is apparent from the perusal of the order passed in writ petition No. 2727 (S/ S) of 2012 which has been reproduced in the memo of appeal that learned Counsel for the petitioner himself submitted after arguing the matter at some length that the writ petition may be dismissed as withdrawn with the liberty to the petitioner to file a statutory appeal as provided u/s 30 of Workmen Compensation Act, 1923 and the learned Counsel appearing on behalf of the respondents did not object to this request. In this view, the order dismissing the writ petition has been passed granting liberty to the petitioner to file a statutory appeal as provided u/s 30 of Workmen's Compensation Act subject to law of limitation. The said order was passed on 29.5.2012. Thus, apart from the delay which occurred in filing the instant appeal from the date of the impugned order dated 12.12.2011 which is as per admission of the appellant himself is of 299 days, the appellant has further committed delay in filing the instant appeal by a period of more than six months from the date the writ petition was dismissed as withdrawn. No reason for explaining the delay for this period of more than six months has been given by the appellant. It is apparent that this delay has occurred due to negligence on the part of the appellant and since laches have not been explained satisfactorily, therefore, sufficient cause cannot be construed liberally in the instant case. The appellant has not been vigilant and is prima-facie responsible for his inaction. It appears that he rendered sleeping over his rights. Thus, for his inaction, he is to be blamed. Due to inordinate delay in preferring the appeal and valuable right has occurred to respondent. In this view of the matter, the application No. 108972 of 2012 u/s 5 of the Limitation Act is devoid of merits and as such is liable to be rejected. Consequently, application No. 108972 of 2012 u/s 5 of the Limitation Act and the instant F.A.F.O. are dismissed.