

(1999) 08 DEL CK 0134

In the Delhi High Court

Case No : C.W.P. No. 3940 of 1998

Karnataka Handloom Development Corporation Ltd.

APPELLANT

Vs

Sh. B.S. Chopra

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7

Citation : (1999) 81 DLT 207 : (1999) 50 DRJ 822 : (2000) 84 FLR 591 : (1999) 123 PLR 44

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Ranjan Kumar, for the Appellant; R.K. Jain, for the Respondent

Judgement

A.K. Sikri, J.—Petitioner, namely, Management of the Karnataka Handloom Development Corporation Limited (hereinafter referred to as "KHDC for short) is a Karnataka State Undertaking. Respondent No. 1 was working with the petitioner as Assistant Accounts Officer (hereinafter referred to as "AAO", for short). His services were terminated by the petitioner. Petitioner and respondent No. 1 had raised industrial dispute challenging the said termination which has been referred for adjudication to Labour Court-3/respondent No. 2. On receiving the reference the Labour Court issued notice to both the parties who appeared before it and filed their respective pleadings. The evidence of workmen was over on 11.1.1994 and thereafter the matter was kept for evidence of the Management on 13.3.1994 on which date witness of the management appeared to give evidence but since Presiding Officer was on leave, the case was adjourned to 3.5.1994. Thereafter the matter came up on 24.9.1994 and 28.9.1994 and on both these occasions the Presiding Officer was on leave. The matter was adjourned to 14.12.1994. On 14.12.1994 nobody appeared on behalf of the management. Accordingly petitioner's evidence was closed and Court proceeded ex parte.

2. Although the petitioner was proceeded ex parte on 14.12.1994, for one reason or the other, case was adjourned for ex-parte argument or otherwise from time

to time and no award could be passed till December, 1997, when application under Order 9 Rule 7 of the CPC was filed by the petitioner-management for setting aside ex-parte proceedings. Notice of this application was issued to respondent No. 1 -workman. The application was argued. Ultimately, vide impugned order dated 21st July, 1998 Labour Court dismissed this application. The petitioner has filed the present writ petition against this order.

3. The case put up by the petitioner in application under Order 9 Rule 7 of the CPC as well as in this writ petition is that the petitioner had engaged one Mr. S.B. Kulkarni, Advocate to conduct the matter on behalf of the petitioner. It is further stated that on 15.5.95 when one Mr. Padmanabhaiya, witness on behalf of the management came for deposition before the Labour Court, he was told by Shri Kulkarni, advocate that management was already proceeded ex-parte on 14.12.1994 and that he would move an application under Order 9 Rule 7 of the Civil Procedure Code. He further told Shri Padmanabhaiya that he would call the witness for the evidence as soon as he gets ex-parte order set aside. Thereafter, enquiries were made from the said advocate from time to time and the advocate kept assuring that he was taking care of the matter. However, petitioner was shocked to know that an ex-parte order was passed against the petitioner in another case entitled Smt. Rajshree Dogra v. Priyadarshi (Suit No. 1052/92) and that case was also entrusted to Shri Kulkarni. After learning this fact, petitioner wrote a letter dated 4.6.1997 requesting Shri Kulkarni to give latest position of the case. It was followed by another letter dated 11.6.1997 but no reply to these letters were received from Shri Kulkarni. Petitioner, accordingly, informed his Head Office the aforesaid position vide letter dated 26.7.1997 and thereupon Head Office took the decision by writing to its Delhi office to withdraw the case from Shri Kulkarni and entrust the same to some other lawyer. Officers of the petitioner repeatedly went to Shri Kulkarni to collect the file of this case but initially he showed his reluctance but ultimately handed over the files on 26.8.97. The petitioner engaged Shri Ranjan Kumar, advocate who inspected the file and then moved an application under Order 9 Rule 7 of the Civil Procedure Code. On the basis of these averments it is contended that there is no fault of the petitioner who had engaged the lawyer and were pursuing the matter also with the lawyer. It is the lawyer who did not appear on 14.12.1994 or did not take appropriate steps under Order 9 Rule 7 of the CPC inspire of informing the petitioner that he would do so and according to the petitioner it remained under bonafide impression that application under Order 9 Rule 7 was filed in May, 1995 itself.

4. In the impugned order, Labour Court has observed that the application under Order 9 Rule 7 of the CPC was moved on 19.12.1997, i.e., almost three years after passing of the ex-parte order and at a very belated stage. It is also observed by the Labour Court that management did not take sufficient steps to protect its interest by pursuing the matter in an appropriate manner with Shri Kulkarni, advocate, inasmuch as if Shri Kulkarni had slept over the matter and was not taking care it was for the management to inspect the file either by itself

or through some officials or to engage some counsel and not to keep waiting till the water goes over the head. For these reasons, Labour Court has dismissed the application.

5. The counsel for the petitioner assailed the aforesaid observation of the Labour Court and contended that the petitioner had taken appropriate care to defend the matter by engaging the counsel and even by pursuing the matter with him. If the counsel gave the impression that the matter was duly attended to and the interest of the petitioner was taken care of there was no reason to disbelieve the counsel and Therefore, according to the petitioner, it cannot be said that it did not take appropriate care. It is further contended that the fault if any, lies with the advocate and petitioner should not be made to suffer because of that. In addition to the authorities cited before the Labour Court and rioted in the order of the Labour Court, petitioner has also relied upon a recent judgment of the Supreme Court in the case of N. Bala Krishnan v. M. Krishnamurthy, cited in 1988 6 AD (SC) 465 where inordinate delay in moving the application for setting, aside ex-parte decree was condoned by Trial Court and upheld by the Supreme Court. The counsel for the petitioner particularly relied upon the following observations of the Supreme Court:--

"It is axiomatic that condensation of delay is a matter of discretion of the Court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the Explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable Explanation whereas in certain other cases delay of very long range can be condoned as the Explanation thereof is satisfactory. Once the Court accepts the Explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixed a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are

meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A Court knows that refusal to condone delay would result in foreclosing a suit or from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words sufficient cause" u/s 5 of the Limitation Act should received a liberal construction so as to advance substantial justice.

It must be remembered 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 mala fides or it is not put forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the Explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss.

6. As against the aforesaid submissions of the petitioner, counsel for respondent No. 1 workmen contended that there is absolutely no justification, in this case, about the petitioner to move the application under Order 9 Rule 7 of the CPC after a period of three years more so when the petitioner came to know about the ex-parte order dated 14.12.1994 atleast on 15.5.94 as per the petitioner's own showing and averment made in the writ petition. Thus according to the respondents, it is a case of sheer negligence on the part of the petitioner to move the application at such a belated stage and it shows that petitioner-management was trying to delay the proceedings. There is, Therefore, no sufficient cause for either condoning the delay or setting aside ex-parte proceedings. The counsel for the respondent No. 1. has placed reliance on the following judgments in support of his contention:

- (i) Ashok Maharaj and Ors. v. Virender and Ors. 1998 3 AD 67 (Delhi)
- (ii) Subhash Kumar v. Delhi Development Authority 1999 2 AD 817.
- (iii) Bhushan Tyagi v. Attar Ali, wife on late Shri Ram Dass 1997 3 AD 958.
- (iv) Smt. Jai Rani Puri and Anr. v. Vinod Kumar Puri and Ors. AIR 1998 Delhi 213.

7. The facts disclosed above show that management is not totally free from fault. There is some negligence on the part of the petitioner-management. When the petitioner came to know on 15.5.95 that petitioner was proceeded ex-parte since 14.12.1994, petitioner should have become more vigilant in pursuing his remedy. It should have ensured that application under Order 9 Rule 7 of the CPC has

been filed by the learned counsel for the petitioner rather than believing the representation of the counsel that such an application has been filed. Further, even if, petitioner presumed that such an application was filed, petitioner should have contacted his lawyer to find out what is happening in the case and what was the outcome of the said application. The case was at the stage of management evidence and it is intriguing that management kept quiet and made up only when it came to know that in some other case ex-parte decree has been passed against it. It is only thereafter in June, 97 the petitioner has started writing letters to its advocate trying to find out the position of this case. In view of this, normally one could have refrained from interfering with the impugned order dated 21.7.1998 passed by the Labour Court.

8. However, for the reasons given below which outweigh aforesaid circumstances, it is appropriate that order dated 21.7.1998 be set aside with certain conditions imposed upon the management. My reasons adopting this course are the following:

(A) Even when ex-parte order dated 14.12.1994 was passed and at that stage the evidence of the workmen has already been concluded, the Labour Court was only required to complete the formality of hearing the argument and then to pass his award. However for three years till the application dated 19.12.1997, was filed by the petitioner under Order 9 Rule 7 of the Civil Procedure Code, no award could be passed and case was only adjourned from time to time for one reason or the other. Thus when the application was filed proceedings were still pending and if for three years award could not be given, one chance could have been given to the petitioner to lead its evidence and participate in the proceedings to enable it to contest case on merits. In fact as on 19.12.1997 the case was virtually at same stage where it was on 14.12.1994.

(B) Petitioner is a government undertaking. Although no leniency can be shown on this ground, fact remains that petitioner had engaged a lawyer and this lawyer was entrusted with another Court case also. Petitioner has its head office in Karnataka and normally such lawyers are approved from head office. It is not easy for the branch office (Delhi office in this case) to change the lawyer had its own discretion. Having entrusted the case to a lawyer, it is stated by the petitioner that enquiries were made from time to time and lawyer was assuring that proper case was being taken. Normally the officials would not take interest in the manner in which a private client would take and peruse the matter by visiting the lawyer on every date of hearing. If the petitioner's lawyer represented on 15.5.1995 then he would have moved an application under Order 9 Rule 7 of the CPC for setting aside ex-parte order dated 14.12.1994 and he gave the impression that such an application was moved and petitioner believing in the said representation of his lawyer, it cannot be said that the petitioner is totally at fault. In such circumstances judgment of the Supreme Court in the case of N. Bala Krishnan (supra) would come to its rescue.

(C) It cannot also be said that the petitioner was adopting any dilatory tactics. In

fact after the evidence of the workmen was over on 11.1.1994 and the case was fixed for management evidence, witness of the management appeared on 13.3.1994 and thereafter but it could not be contacted since the Presiding Officer was on leave. What happened thereafter is already stated above.

(D) Even when the petitioner was proceeded ex-parte on 14.12.1994 matter kept lingering on for a period of three years and final award could not be passed when admittedly petitioner was not even appearing and Therefore it cannot be said that it is the petitioner who has delayed the proceedings.

10. Since the matter is still pending before the Labour Court and the stage is almost the same as it was on 14.12.1994 for the reasons stated above, impugned order dated 21.7.1998 of the Labour Court rejecting the application of the petitioner under Order 9 Rule 7 of the CPC is set aside. Accordingly, this application is allowed and order dated 14.12.1994 proceeding ex-parte against the petitioner is hereby set aside subject to the following conditions:-

- (i) Petitioner shall pay a cost of Rs. 15,000/- to the respondent No. 1/workmen;
- (ii) Labour Court would fix a particular date for evidence of the petitioner-management and petitioner-management would bring his evidence on the said date and would not seek any adjournment on this ground.
- (iii) Labour Court shall dispose of the case and pass its award within three months from today.

Writ petition stands disposed of.