

(1993) 10 GAU CK 0005

In the Gauhati High Court

Case No : Miscellaneous Case No. 14 of 1990 in Misc.Appeal (First) No. 57 of 1989

LA Collector, North Tripura

APPELLANT

Vs

Nalini Mohan Paul

RESPONDENT

Date of Decision : 14-10-1993

Acts Referred:

Civil Procedure Code, 1908 — Order 41 Rule 1
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Land Acquisition Act, 1894 — Section 26, 26, 54, 54

Citation : (1994) 2 GLJ 445

Hon'ble Judges : N.G.Das, J

Bench : Single Bench

Advocate : U.B.Saha, S.Deb , Advocates appearing for Parties

Judgement

1. This application under section 5 of the Limitation Act has been filed for condonation of delay in presenting the appeal No. MA (F) No. 57 of 1989 against the award dated 30.9.1988 that was passed by the learned Land Acquisition Judge, North Tripura, Kailashahar in Misc. (LA) Case No. 18 of 1987.

2. Admittedly the award was passed on 30.9.88 and as such the appeal was to be filed latest by 29th of December, 1988. But the copy of the award that has been filed along with memo of appeal shows that on 16.11.88 the appellantpetitioner filed application for certified copy of the award and requisites for certified copy of the award were notified on that very date. The appellantpetitioner deposited the requisites i.e. stamp and folios on 16.11.88 and 6.12.88. The certified copy was made ready on 6.12.88. But it was actually delivered to the appellantpetitioner on 7.12.88. So, according to this copy of the award the appellantpetitioner is entitled to get another 21 days. So, the period of limitation for filing the appeal expires on 19th January, 1989. But the appellantpetitioner filed the appeal on 20.2.89 ie after 31 days.

3. The grounds set forth in the petition for condonation are that the

appellantpetitioner required 22 days for getting the certified copy of the award and thereafter the concerned files moved from one department to another department for obtaining the decision for filing appeal and ultimately the file was sent to learned Govt. Advocate on 6.12.89 with the approval of the Government for filing the appeal. The learned Govt. Advocate, thereafter took 14 days for drafting the memo of appeal and doing other necessary things and as such the delay occurred.

4. Mr. S. Deb, the learned senior counsel appearing on behalf of the respondent has opposed to grant the prayer for condonation. The first contention of Mr. Deb is that the petitioner has not filed certified copy of the decree in time. In drawing my attention to the provision laid down under Order 41 Rule 1 CPC it is submitted by Mr. Deb that the appeal is not entertamable as certified copy of the decree was not presented in time. Actually the certified copy of the decree has been filed along with the memo of appeal and this certified copy of the decree shows that the appellantpetitioner filed the application for obtaining certified copy of the decree on 3.1.89 and certified copy of the decree was made ready for delivery on 16.1.89. That apart, it is contended by Mr. UB Sana, the learned Govt. Advocate that in preferring an appeal against the award passed under the Land Acquisition Act no decree is actually required to be filed as is required in other appeals. It is submitted by Mr. Saha that this appeal has been filed under the provision of section 54 of the Land Acquisition Act, 1894 (for short the Act) and this provision hat clearly laid down that appeal shall lie to the High Court from the award or from any part of the award. Section 54 of the Act reads :

"54. Appeals in proceedings before Court. Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal aforesaid an appeal shall lie to (the Supreme Court) subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908 and in Order XIV thereof."

5. It is apparent from the provisions quoted above that an appeal shall lie to the High Court from an award or from any part of the award. Mr. Deb's contention is that the term "award" has not been defined in the Act of 1894. But according to section 26 of the Act every award shall be in writing signed by the Judge and shall specify the amount awarded under clause (1) subsection (1) of section 23 and also the amounts, if any respectively awarded under each of the other clauses of the same subsection, together with the grounds of awarding each of the said amounts. Clause (2j) provides that every such award shall be deemed to be decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9) respectively of the Code of Civil Procedure. Section 30 provides that when the amount of compensation has been settled under section 11, if any dispute arises as to the

apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. Section 31 of the Act reads :

31. Payment of compensation or deposit of same in Court. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more or the contingencies mentioned in the next subsection. (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18.

6. Then follows section 32. It lays down what a Court should do when the land in respect whereof compensation has been awarded belongs to any person who have no power to alienate the same. When such a reference is made the Court makes an award under section 26 and it has the force of decree. It is an award of a Court and appealable under section 54 of the Act.

7. But in this context, it is argued by Mr. Deb that this award did not indicate the specific amount and as such it cannot be characterised as award in terms of section 26 of the Act. But on reading the copy of the award I find that although learned LA Judge did not specifically mention what the amount the awardee will get, he gave at what rate/rates the awardee will be entitled to get the compensation. The amount can, therefore be easily calculated. I am, therefore, unable to accept this contention of Mr. Deb.

8. The next contention raised by Mr. Deb, the learned senior counsel for the respondent is that the copy of the award which has been enclosed with the memo of appeal is not a certified copy and as such this is not acceptable according to law. But along with the memo of appeal the appellantpetitioner has also filed an application stating therein that since the award in question is a common award in respect of a number of cases and since the appellantpetitioner also preferred appeal against same award with respect to other cases the certified copy of the award was filed along with the memo of appeal that was filed against this award passed in connection with Misc. (LA) Case No. 7 of 1987. There is no dispute in respect of this fact. It is however, true if the memo of appeal is not accompanied by a copy of the decree the appeal would not be properly constituted and would be liable to be rejected on that ground. But proviso to Order 41 Rule I, CPC envisages that the Court may dispense with the copy of the judgment. So, in view of the fact that the certified copy of the award

has been filed along with the memo of appeal that was preferred against the same award passed in connection with Misc. (LA) Case No. 7 1987,¹ see no reason why this copy of the award should not be accepted and accordingly[^] I accept copy of this certified copy of the award.

9. The next contention of Mr. Deb is that the appellantpetitioner failed to assign sufficient reason for the delay in presenting the appeal and as such the prayer for condonation cannot be allowed. Mr. Saha, the learned Govt. Advocate has argued that it is known to every one that for filing an appeal by the Government the file has to move to a number of departments for decision and in the present case also the file routed through a number of departments and thereafter it came to the Government Advocate. So far as limitation is concerned, it has also been submitted by Mr. Saha that the law of limitation has undergone an oceanchange and the Legislature has given the power to condone the delay by enacting section 5 of the Indian Limitation Act in order to enable the Courts to do substantial justice to parties by disposing of matter on merits. It is true that Court has been making a justifiable liberal approach in such matters. In the instant case, there is nothing on record to show by the respondent that the appellantpetitioner was negligent in filing the appeal. No counteraffidavit has been filed by the respondent. So, there can be no presumption that the delay was occasioned deliberately or on account of palpable negligence or on account of malafides.

10. So, upon consideration of all the facts and circumstances discussed above I condone the delay. The prayer for condoning the delay in preferring the appeal, No. MA (F) No. 57 of 1989 is accordingly allowed.

The petition is disposed of.