
(2009) 02 CHH CK 0010
In the Chhattisgarh High Court

Lakshmi Prasad

APPELLANT

Vs

National Thermal Power Corporation and Another

RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Limitation Act, 1963 — Section 3, 5

Citation : (2009) 2 CGLJ 61 : (2009) 2 MPHT 52

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Judgement

T.P. Sharma, J.—None present for the applicant. No representation is made.

2. None present for non-applicant Nos. 2 to 10, though served.

3. I have heard learned Counsel appearing on behalf of non-applicant No. 1 and the State/non-applicant Nos. 11 and 12 and perused the revision.

4. This revision is directed against the order dated 21-11 -2007 passed by the 6th Additional District Judge, Bilaspur in Civil Appeal No. 17-A/2007, whereby learned Additional District Judge allowed the application filed u/s 5 of the Limitation Act, 1963 (for short "the Act") and condoned the delay in filing the appeal.

5. The order is challenged on the ground that any appeal filed after the period of limitation should be dismissed in accordance with Section 3 of the Act and before allowing the application for condonation of delay filed u/s 5 of the Act, opportunity of hearing to the opposite party is sine qua non, but the Court below has not afforded opportunity of hearing to the present applicant and has passed the order which is without jurisdiction.

6. It has been prayed on behalf of the applicant that the revision be allowed and the appeal pending before the Court below be disposed of finally on the ground of limitation.

7. Dr. N.K. Shukla, learned Counsel appearing on behalf of non-applicant No. 1, submits that the Court below has not afforded opportunity of hearing to the parties and allowed the application filed u/s 5 of the Act, but this irregularly may be cured and the Court may consider the application filed on behalf of the non-applicants supported by affidavit stating/explaining the grounds of delay.

8. I have perused the order impugned and copies of other orders/documents. Appeal u/s 96 of the Code of Civil Procedure, 1908 (for short "the Code") was filed on behalf of non-applicant No. 1 herein before the 6th Additional District Judge, Bilaspur. On 21-11-2007, after hearing non-applicant No. 1 on the question of limitation, the Court below has allowed the application filed on behalf of non-applicant No. 1 for condonation of delay in filing of the appeal of 66 days without affording any opportunity of hearing to the opposite party, i.e., the respondent/plaintiff No. 2/present applicant.

9. Procedure for filing and hearing the appeal has been prescribed under Order 41 of the Code. When an appeal is filed or presented after the expiry of the period of limitation, the appellant is required to file an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period, in accordance with Order 41 Rule 3-A of the Code and if the Court satisfies that there is no reason to dismiss the application, then the Court is required to issue notice to the opposite party on the application for condonation of delay in filing the appeal in accordance with Order 41 Rule 3-A of the Code. Rule 3-A of Order 41 of the Code reads as follows:

Rule 3-A. Application for condonation of delay.- (1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under Rule 11 or Rule 13, as the case may be.

(3) Where an application has been made under Sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.

10. Admittedly, in the light of the provisions of Rule 3-A of Order 41 of the Code and Section 5 of the Act, providing opportunity of hearing to the opposite party is sine qua non and the opposite party may satisfy the Court that the appellant is not having any ground for explaining the delay in filing the appeal and on such cases, the appeal filed after the period of limitation may be dismissed. In this case, the Court below has not provided opportunity to the applicant herein in

accordance with Rule 3-A of Order 41 of the Code and thereby committed illegality. Order impugned is not sustainable.

11. Consequently, the revision is allowed and the order dated 21-11 -2007 passed by the 6th Additional District Judge, Bilaspur in Civil Appeal No. 17-A/2007 is hereby set aside. The case is remitted back to the First Appellate Court for providing opportunity of hearing to both the parties and to pass order afresh on the application filed u/s 5 of the Act.

12. I. A. Nos. 1,3,4,5,6 and 7 thus stand disposed of.