
(2012) 10 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15449 of 2012

Madhya Pradesh Poorve Kshetra Vidut Vitran Company Ltd.	APPELLANT
Vs	
Presiding Officer Appellate Authority and Another	RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Electricity Act, 2003 — Section 127
Limitation Act, 1963 — Section 14, 5

Citation : (2013) ILR (MP) 557

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Rakesh Tiwari, for the Appellant;

Judgement

U.C. Maheshwari, J.

He is heard on the question of admission.

1. On behalf of petitioner the Electricity Company, this petition has been preferred under Article 226/227 of the Constitution of India, being aggrieved by the order dated 6.8.2012, passed by the appellate authority constituted under the Electricity Act in Appeal No. 3/12, whereby, allowing the application of the respondent no. 2 filed u/s 5 of the Limitation Act, the entire delay in filing such appeal has been condoned. Petitioner's counsel after taking me through the papers placed on the record argued that vide order dated 13.12.2011 passed in writ petition No. 2996/11 (Annexure-P-1), the respondent no. 2 was extended the period of four weeks from such date to file the impugned appeal u/s 127 of the Electricity Act 2003 before the appellate authority, but instead of filing such appeal within the aforesaid prescribed period, the same has been filed at very belated stage on dated 12.2.2012 while the period given by this Court was expired on 11.1.2012. In continuation he said that, whatsoever reason has been assigned by the respondent no. 2 in it's application filed u/s 5 of the Limitation Act, were not sufficient to condone the alleged delay in filing the appeal because

after filing the appeal before the wrong Forum the respondent no. 2 received the information from such Forum on dated 19.1.2012, that the appeal has been filed before the wrong Forum while the same ought to have been filed before some other Forum. In spite of that, for near about 23 days, the appeal was not preferred before the appropriate Forum and it is apparent from the record and the impugned order that no sufficient cause has been explained on behalf of the respondent no. 2 to condone the delay for the period between 20.1.2012 to 12.2.2012 and in such premises, prayed for admission and allowing this petition.

2. Having heard keeping in view the arguments advanced, I have carefully gone through the papers placed on the record.

3. True it is that vide Annexure-P-1, the respondent no. 2 was extended a liberty to file the appeal within four weeks from such date before the appropriate Forum, but as per available papers, on 10.1.2012 under the aforesaid liberty the appeal u/s 127 of the Act, was preferred on behalf of respondent no. 2 in the Office of Chief Engineer (RR) MPPKVVCL Rewa, but from such Office the petitioner was intimated that such appeal is not maintainable by the Chief Engineer, the same could be entered by the Assistant Engineer (Electric Safety) or Assistant Electricity Inspector, Rewa and from the averments of the application u/s 5 of the Limitation Act (Annexure-P-2), it appears that on receiving such information the appeal was preferred on the aforesaid date on 12.2.2012 before the appellate authority as intimated by the aforesaid letter dated 19.1.2012. I have not found any papers on record showing that on which date such intimation of the Chief Engineer was served on the respondent no. 2, even the petitioner herein has also not placed any record along with this petition to show that on which date such intimation was served on the respondent no. 2. So, in such premises, it could not be assumed that such letter of 19.1.2012, was served on the respondent no. 2 on the same day or within two-three days. It is apparent from the aforesaid application u/s 5 of the Limitation Act, that the same was filed by the respondent no. 2 along with an affidavit of Shri Arun Pandey, some official of the respondent no. 2 while, the objection filed on behalf of petitioner in response of aforesaid application, has not been supported by any affidavit of the official. So, in the lack of any affidavit, the appellate authority has not committed any error in relying on the version of the respondent no. 2.

4. True it is that the appellate Authority has committed irregularity in considering the aforesaid application u/s 5 of the Limitation Act, the same ought to have been considered u/s 14 of the Limitation Act because initially, the respondent no. 2 filed the appeal before the wrong Forum i.e. Chief Engineer of the petitioner-Department Rewa and on coming to know about such mistake, immediately along with the aforesaid application he has filed the appeal before the appropriate Forum. But I am of the view that mere mentioning the wrong Section in the application does not debar the party like respondent no. 2 to get the relief for which it is entitled. So, in such premises, taking into consideration that sufficient cause is made out to condone the alleged delay or to exclude the

period spent by the respondent no. 2 in prosecuting the appeal before the wrong Forum under the bonafide circumstances. I am of the view that the impugned order does not require any interference at this stage.

5. It is settled principle of law that unless compelling circumstances are available on record, the litigation should not be struck down or thrown away by holding that the same has been barred by time by dismissing the application filed u/s 5 of the Limitation Act. As such while dealing with the issue for condoning the delay in filing the proceedings, the Court or the authority are bound to take into consideration the stake of the litigation. In such premises also, on examining the matter, it appears that the respondent no. 2 has some debatable question on merits for adjudication before the appellate authority and in such premises also, the subordinate appellate Court has not committed any error either in condoning the delay in filing the appeal or in excluding the period spent by the respondent no. 2 in prosecuting the appeal before the wrong Forum as stated above. In such premises, it is also held that the respondent no. 2 has not violated the aforesaid order of this Court (Annexure-P-1) in filing the impugned appeal. In view of the aforesaid, I have not found any perversity, illegality, infirmity or anything against the propriety of law in the order impugned of the appellate authority condoning the delay in filing the appeal. Consequently, this petition being devoid of any merit is hereby dismissed at the stage of motion hearing.