
(2013) 10 DEL CK 0243

In the Delhi High Court

Case No : Review Pet. 303/2013, CM Appl. 8724, 8725 and 8726/2013 in FAO (OS) 195/2013 & Review Petition 303 of 2013 and CM Application 8724, 8725 and 8726 of 2013 in FAO (OS) 195 of 2013 & Review Petition 303 of 2013, CM Application 8724, 8725 and 8726 of 2013 in FAO (OS) 195 of 2013

Mahanagar Telephone Nigam Limited

APPELLANT

Vs

Prakash and Company

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0243

Hon'ble Judges : S. Ravindra Bhat, J;Indermeet Kaur, J

Bench : Division Bench

Advocate : Rachna Joshi Issar and Ms. Ambreen Rasool, for the Appellant; Siddharth Khartar and Mr. Faisal Zafar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The appellant seeks review of the order dated 12.04.2013. By that order, this Court had rejected the appeal against the order of the learned Single Judge. The latter had refused to consider the petition u/s 34 of the Arbitration and Conciliation Act on the ground of delay. The facts emerging from the record of the order to be reviewed would disclose that the original petition u/s 34 apparently was filed in time; however, defects were notified, as a consequence of which, the file was taken back. It was refiled after 233 days, i.e., much after the period notified and permissible in terms of the Rules. The Division Bench considered the pleadings that were urged before the learned Single Judge including the application for condonation of delay and applying the ratio in The Executive Engineer (Irrigation and Flood Control) Vs. Shree Ram Construction Co., -which was apparently reiterated in another judgment, i.e., Grid Corporation of India v. BWL Limited (which was carried in appeal by Special Leave to the Supreme Court being SLP 34349/2010 where the Division Bench ruling was affirmed), dismissed the appeal.

2. The Court also noticed the previous basic ruling of the Supreme Court in Union of India Vs. M/s Popular Construction Co., as regards the inapplicability of the Section 5 of the Limitation Act.

3. It is urged on behalf of the Review Petitioner that the Court fell into an error in not properly appreciating the averments made in the application for condonation of delay especially the contents of the affidavit sworn to by the counsel for the petitioner/appellant. Great stress was laid upon the fact that the Division Bench overlooked this affidavit and the orders sought to be reviewed have faulted the appellant in not acting diligently. Learned counsel placed emphasis upon the counsel's affidavit and the relative averments made in the condonation of delay application to say that the delay was unintended and occasioned by factors beyond the control of the concerned party, i.e., the appellant.

4. This Court has carefully considered the submissions made and the averments. The order sought to be reviewed has, with respect, duly taken note of all the relevant case laws applicable in the circumstances and consistent with that understanding ruled that the learned Single Judge's order cannot be faulted either in approach or in regard to appreciation of facts and law. Furthermore, the Division Bench in the order sought to be reviewed held as follows:-

If we turn to the averments contained in the application seeking condonation of delay in re-filing, we find that there are reasons given of the bereavement in the family of an associate of the counsel who lost her son and thus did not join office for four months. Another associate is stated to have stopped coming to court due to his mother being hospitalised and could join office only after a couple of months. The steno was not experienced in the work and the typing work had to be redone as the papers were lost due to some problem in the computer. Last reason given is that the brother-in-law of the counsel was diagnosed with cancer and had to undergo medical examination which was a distressful situation for the family as the wife of the counsel had passed away six years ago because of cancer. The aforesaid facts may generate sympathy for the counsel but the question is whether they would amount to a sufficient cause to condone the delay in re-filing. We may note first that there are no particulars or dates given whatsoever. The periods are not mentioned. Further the problem really related to an associate of the counsel.

In our view, the most important aspect is that the appellant before us is a public sector enterprise having a large legal department. The legal department would be expected to take due care. If the counsel is unavailable for some reason, alternative arrangement should have been made as is now sought to be made by engaging the counsel who has addressed submissions before us. Sympathy may have persuaded this Court to condone some period of the delay but certainly not of 233 days in re-filing which shows a complete non follow-up by the legal department of the appellant itself.

The Supreme Court in Office of The Chief Post Master General and Others Vs.

Living Media India Ltd. and Another, has held that there is no separate law of limitation for public sector enterprises and public interest is also in preventing and pursuing stale claims. The appellant is an entity which has a large legal department. In the absence of plausible and acceptable explanation, it has been observed that condonation of delay mechanically merely because the Government or a wing of the Government is a party is not permissible. Thus, it has been observed that claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. Thereafter the Supreme Court has observed that it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment.

Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. In view of the aforesaid judgment, such a plea is no more available to the petitioner.

It is evident that the Court went into great depth and considered the circumstances pleaded by the appellant in support of the claim for condonation. In these circumstances, which can hardly be said that there is any error much less apparent on the face of the record warranting exercise of review jurisdiction. The review petition is accordingly dismissed along with all the applications.