
(2011) 11 KAR CK 0324

In the Karnataka High Court

Case No : Criminal Revision Petition No. 748 of 2011

Mr. Shreehari Rao B Kodikal

APPELLANT

Vs

Mr. V. Rao Gulur Rao

RESPONDENT

Date of Decision : 19-11-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 11 KAR CK 0324

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Adlaw Partners, for the Appellant; N. Manohar, for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure, J.—Though the matter is listed for admission with the consent of both the parties it is taken up for final disposal.

2. The petitioner has challenged the order dated 13th April 2011 in CrI. A. No. 686/2010 passed by the First Appellate Court.

3. The facts reveal that the respondent filed a complaint u/s 138 of Negotiable Instruments ACT in CC No. 24934/2007. After completion of the trial the petitioner herein was convicted for the aforesaid charge and was ordered to pay a fine of Rs. 2,40,000/-in default to undergo Simple Imprisonment for six months.

4. The counsel for the petitioner submits that the amount was deposited and it was paid to the respondent. But anyhow, the respondent preferred CrI. A. No. 686/2010 challenging the quantum of fine ordered by the learned Magistrate. Alongwith the appeal he had filed an I.A under the provisions of Section 5 of the Limitation Act requesting to condone the delay in filing the appeal. But unfortunately the First Appellate Court has not passed orders on I.A. but allowed the appeal enhancing the fine amount. Aggrieved by the order of the First

Appellate Court enhancing the fine, the present revision petition has been filed.

5. I have heard the learned counsel for both the parties.

6. The certified copy of the order sheet has been produced by the petitioner in this revision petition and it reveals that an application was filed by the respondent u/s 5 of the Limitation Act praying to condone the delay in filing the appeal before the First Appellate Court. The order sheet discloses that the said application was never posted for objections. It was never heard but the First Appellate Court after hearing the appeal has allowed the appeal itself enhancing the fine amount. When an 1.A. for condonation of delay is pending, the First Appellate Court ought not to have entered into the merits of the appeal.

In the circumstances order of the First Appellate Court in the appeal is both erroneous and illegal. It deserves to be set-aside. Hence, the revision petition is allowed. The order in Crl. A. No. 686/2010 dated 13.04.2011 is set-aside. The matter is remitted back to the First Appellate Court to hear the application filed u/s 5 of the Limitation Act and thou to enter into the merits of the appeal.

Ordered accordingly.