

(2022) 09 MP CK 0093

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1247 Of 2019

M/S Fort Crushing Metal Through Sunil Jain

APPELLANT

Vs

M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. And Others

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 7(1)

Madhya Pradesh Uchha Nyayalaya (Khand Nayaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2, 2(1)

Citation : (2022) 09 MP CK 0093

Hon'ble Judges : Subodh Abhyankar, J; Satyendra Kumar Singh, J

Bench : Division Bench

Advocate : Vinay Zelawat, Aashay Dubey, Prasanna Prasad

Final Decision : Dismissed

Judgement

1. Heard on I.A. No.6000 of 2022 which is an application for maintainability of this writ appeal filed by the respondents M.P.P.K.V.V.C.L.

2] Shri Prasanna Prasad, counsel appearing for the respondents has submitted that this appeal has been preferred against two orders, one passed in Writ Petition No.20703 of 2018 on 13.02.2019, whereas the other order is passed in Review Petition No.516 of 2019 dated 29.04.2019. It is submitted that the provisions of Section 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nayaypeeth Ko Appeal) Adhiniyam, 2005, and the rules made thereunder do not provides one appeal against two separate orders. In support of his contention Shri Prasad has also relied upon a Division Bench decision of this Court in the case of State of M.P. and others Vs. Pankaj Chaudhary in W.A. No.77 of 2014 dated 13.04.2015. He has also relied upon decisions rendered by the Supreme Court in the case of Shanker Motiram Nale Vs. Shiolalsing Gannusing Rajput reported as (1994) 2 SCC 753 and Suseel Finance & Leasing Co. Vs. M. Lata and others reported as (2004) 13 SCC 675. Shri Prasad has also referred to the provisions of Order 47 Rule 7 of CPC, which provides that an order of the Court

rejecting an application for review is not appealable.

3] The aforesaid application is opposed by Shri Vinay Zelawat, Senior counsel appearing for the appellant and it is submitted that the appeal is maintainable as the writ Court passed the order on 13.02.2019, whereas the review petition was filed after a delay of after 24 days, which has also been condoned by the writ Court, however, the review petition has been dismissed on 29.04.2019, whereas the present appeal has been preferred on 25.07.2019, after a delay of 70 days. Shri Zelawat has also relied upon a subsequent decision rendered by Division Bench of this Court in the case of Central Madhya Pradesh Gramin Bank Vs. Nek Ram Singh reported as AIR Online 2018 MP 637.

4] Heard counsel for the parties and perused the record.

5] From the record, it is found that so far as the provisions of Adhiniyam is concerned, Section 2 provides that an appeal shall lie from a judgement or order passed by one Judge of the High Court. So far as Order 47 Rule 7 of CPC is concerned, the same reads as under:-

"7. Order of rejection not appealable. Objections to order granting application.

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party."

6] So far as the decision rendered by the Division Bench of this Court in the case of Pankaj Chaudhary (supra) is concerned, the same reads as under:-

"Heard on IA No.1368/14, an application for condonation of delay.

The State has preferred the present writ appeal against the order dated 7.5.2004 passed in WP (S) No.901/2004 whereby the increment was directed to be released in favour of the respondent from the date of his initial appointment.

The learned counsel for the State has submitted that no opportunity was given to file return and the matter was disposed off on the date of first hearing. He has placed his reliance upon the judgment of Hon'ble the Apex Court in the case of "State of Madhya Pradesh & others Vs. Bharat Singh Bhati & others" [(2008) 11 SCC 668], in which it is held that the State has a right to file return to the writ

petition. The High Court has wrongly assumed that return to writ petition had been filed and granted relief to the petitioner.

After considering the submissions made by the learned counsel for the parties, it appears that the present writ appeal has been filed with a delay of 3492 days i.e. approximately 9 to 10 years.

Actually a common writ appeal is filed against the order dated 7.5.2004 passed in WP (s) No.901/2004 and the order dated 18.3.2013 passed in RP No.45/2007, these two orders are passed at different stages, and therefore these orders cannot be challenged in a common appeal. It appears that the State has preferred a single appeal against both the orders to hide the delay of 3492 days in filing the appeal against the order dated 7.5.2004 passed in WP(S) No.901/2004. No satisfactory explanation has been given by the State for such a huge delay in filing the present writ appeal and no reason has been shown as to why the writ appeal was not filed soon after passing the order. If any review petition was filed, then still writ appeal could be filed within the stipulated period. Under these circumstances, the grounds shown by the State are not acceptable.

So far as the delay of writ appeal relating to order dated 18.3.2013 passed in RP No.45/2007 is concerned, the review petition was decided on 18.3.2013 and thereafter appeal was filed after 11 months. There is no specific explanation for such 11 months' delay in filing the writ appeal. If the officers of the State have wasted their time in making various formalities, which could be done within one month, then by such formalities, a huge delay of 11 months after dismissal of review petition cannot be condoned.

After considering the reasons mentioned in the application and as submitted by the learned counsel for the State, there is no ground so that a huge delay of 3492 days may be condoned. Consequently, IA No.1368/14 is hereby dismissed.

On the basis of the aforesaid discussion, when the application for condonation of delay has been dismissed, the present writ appeal is hereby dismissed being barred by limitation."

(emphasis supplied)

7] On perusal of the aforesaid order dated 13.04.2015, it reveals that the facts of the aforesaid case were a bit different as the in the aforesaid case writ appeal was filed after a delay of approximately 9 to 10 years and the initial order was passed on 07.05.2004, whereas the order in the review petition, which was filed in the year 2007 was passed on 18.03.2013 and in such circumstances, the Court has held that these two orders have been passed at two different stages, hence not acceptable.

8] So far as Rule 7(1) of Order 47 of CPC is concerned, it stipulates that an order of the Court rejecting the review application shall not be appealable. In the present appeal, it has been preferred not only against the order passed by the writ court but also against the order passed in the review petition, and thus, it is

not a case where the writ appeal has been preferred only against the order of rejection passed in review petition, in such circumstances, even if the said order passed in review petition is also challenged by the appellant in this writ appeal, it cannot be said that it would render the writ appeal as not maintainable. This court is of the considered opinion that it would only serve the interest of justice if the appellant can also challenge the order of rejection of review petition in the appeal preferred against the original order, as there are occasions when the appellate court itself is of the opinion that the appellant could have raised the grounds raised in appeal, in a review petition. For these reasons, the decisions in the cases of Shankar Motiram Nale and Suseel Finance & Leasing Co., (supra) are of no avail to the respondent as the same are distinguishable.

9] As a result, it is held that the appeal is maintainable and the application for dismissal of appeal only on this ground that it has been preferred against two orders is hereby rejected.

Let the matter be listed on 28.10.2022 for further orders.