(2013) 08 KAR CK 0098

In the Karnataka High Court

Case No : S.T.R.P. No''s. 221 of 2013 and 251 of 2013

M/s. Nandi Wines — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0098

Hon'ble Judges : N.K. Patil, J;B. Manohar, J

Bench : Division Bench

Advocate : A. Sathyanarayan, for the Appellant; Sujatha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner herein has sought for review of the judgment and order dated 17/10/2006 passed in STA Nos. 1294 & 1295/2002, by the Karnataka Appellate Tribunal, Bangalore (CH-8). Along with these petitions, petitioner has filed I.A. No. I/2013 for condoning the delay of 2214 days in filing these petitions.

2. We have heard the learned counsel appearing for petitioner and learned Government Advocate appearing for respondent and perused the objections filed by the respondent.

3. The delay of 2214 days in filing the review petitions has been explained in the affidavit filed in support of LA No. 1/2013 stating that, she was not informed by her previous counsel about the disposal of the appeals filed by her nor she was furnished with the copy of the said order. She came to know the final order of the Karnataka Appellate Tribunal in February 2013 when she received a notice of demand issued. in pursuance of the aforesaid final orders by the Deputy Commissioner of Commercial Taxes (Audit-27) Bangalore. Further, it is stated that on receipt of the said demand notice, she approached her counsel to ascertain as to whether he was aware of the passing of the order and whether a

copy was received by him from the Karnataka Appellate Tribunal and requested to furnish the said order. But her counsel has neither furnished any information nor furnished the copy of the aforesaid final order passed by the Karnataka Appellate Tribunal. Further, it is stated that, she had applied for the certified copy of the order on 17.6.2013 obtained the same and enclosed as Annexure-A. Therefore, for the lapses of her previous counsel, she is not liable to be punished on the point of delay (Mahaveer Prasad Jain Vs. State (SC). The said delay is neither due to negligence or intentional, but it was due to the aforesaid circumstances which were beyond her control. Therefore, she prayed that, the delay so caused may kindly be condoned and petitions may kindly be admitted for disposal on merits, in the interest of justice and equity.

4. After careful perusal of the statements made in the affidavit dated 1/7/2013 accompanying the application, we are of the considered view that, there is an inordinate delay in filing the review petitions and the same has not been explained satisfactorily by assigning valid and cogent reasons. Except making omnibus statement, no credible or trustworthy reasons are assigned for explaining the said inordinate delay and there is no whisper in the affidavit as to on what date she has applied for the certified copy of the order and on what date she has obtained the same. It is significant to note that, petitioner is not an illiterate person, but she is running a wine shop. Further it is significant to note that, earlier also, she has represented through her counsel before this Court in STRP No. 55/2004. Annexure-G, the communication certificate issued by the Assistant Registrar of Karnataka Appellate Tribunal, Bangalore, shows that, the copy of the judgment passed by the Tribunal on 17.10.2006 in STA Nos. 1294 & 1295/2002 was sent to the appellant''s counsel therein through RPAD No. 555 on 17.11.2006. The petitioner has the assistance of her counsel through out the litigation before the authority as well as before this Court in the earlier round of litigation and in the present litigation also. When the judgment copy has been forwarded to the petitioner by the Assistant Registrar, Karnataka Appellate Tribunal, through RPAD, it is a deemed service as held by the Apex Court and this Court in catena of judgments. As there is an inordinate delay of 2214 days in filing these petitions, the petitioner is bound to explain each day''s delay in filing the petitions by assigning cogent and valid reasons. Therefore, much credibility cannot be given to the statements made in the affidavit accompanying the application and the same cannot be accepted. Therefore, we are constrained to observe that the petitioner has not approached this Court with clean hands and stated the true facts and on the ground of suppression of material fact also, IA No. I/2013 is liable to be dismissed with the cost of Rs. 5,000/- and accordingly, it is dismissed. Consequently, these petitions filed by petitioner are also dismissed.

The petitioner shall pay the said cost of Rs. 5,000/- to the respondent- the Commissioner of Commercial Taxes, Karnataka, within a period of two weeks from the date of receipt of a copy of this order, failing which, the respondent is permitted to recover the said amount in accordance with law.

