
(2003) 10 DEL CK 0088

In the Delhi High Court

Case No : Civil Writ Petition No's. 7185, 7186, 7847-51, 7929-37, 7939-43, 7945-52, 7954, 7956, 8162-96, 8252-53, 8255-56, 8258-59, 8261-2, 8264-5, 8268, 8269, 8275, 8281-92, 8294-8302, 8326-32, 8354 and 8356/02 and 126-130, 132-133, 135-139, 141-157, 160-167, 169

M.S. Shoes East Ltd.

APPELLANT

Vs

M.R.T.P. and Others

RESPONDENT

Date of Decision : 23-10-2003

Acts Referred:

Arbitration Act, 1940 — Section 20
Companies Act, 1956 — Section 69
Constitution of India, 1950 — Article 136
Limitation Act, 1963 — Article 137
Monopolies and Restrictive Trade Practices Act, 1969 — Section 12B, 41, 55
Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 143
Punjab Tenancy Act, 1887 — Section 50

Citation : (2005) 128 CompCas 945 : (2003) 107 DLT 595 : (2004) 52 SCL 628

Hon'ble Judges : H.R. Malhotra, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Rajiv Nayyar, Anuradha Dutt, Vijay Kundal and Ekta Kapil, for the Appellant; Ritu Singh Mann, for respondent No.1 in CW Nos. 3464/2003 and 7951/2002, Manmohan Dinesh Mathur, R.S. Mathur and Tarun Johri, in CW No. 3466/2002, U.K. Chaudhary, Senior Advocate, Anuradha Sharma and Himalika Khanna, in CW Nos. 7185, 7946, 7950, 7954, 7956, 8172-3, 8253, 8258, 8282, 8285, 8289, 8294, 8302 and 8328-9/02 and 147, 151, 155, 163-7, 169-171, 175, 586-7, 588-595, 597-600, 609 and 7848-9/03, Sanjeev Sethi in CW 7847/02, Gautam Awasthi and S.R. Sharma, in CW No. 7933/02, Sumant Batra and Priyanjali, in CW 7850 and 8167/02 and 176/03, Sandeep Mittal, Ashish Jha and Reetu Sharma, in CW No. 8169/02, Jay Savla in CW No. 8171/02, Vijay Kumar and Rekha Anand, in CW No. 8179/02, A.N. Tiwari in CW No. 8181/02, S.C. Tiwari in CW No. 8182/02, Vivek Kohli and Harish Kumar, in CW No. 8193/02, P.I. Jose in CW No. 8261/02, Rahul Bhardwaj in CW No. 8265/02, Rajneesh Jaswal and Sanjeev Kumar, in CW No. 8296/02, R. Sudhinder in CW No. 8327/02 and Neelima Tripathi and Tanu Gupta, in CW No. 148/03, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—All the aforementioned civil writ petitions are being disposed of by this common judgment.

2. The petitioner, M.S. Shoes East Limited, has filed 208 cases in the Monopolies & Restrictive Trade Practices Commission (for short 'Commission') in relation to deficiency of service by the underwriters/brokers who offered their underwriting and/or procurement services for the public issue of the complainant in February 1995.

3. The public issue of the petitioner's company was floated on 14th February, 1995 and was closed on 18th February, 1995. However, as the subscription was below 90% within 30 days of the closing of public issue, the public issue devolved on the underwriters. The underwriters failed to make payment of the underwriting amounts within 30 days as a result of which within 60 days of the closure, petitioner M.S. Shoes could not collect 90% of the public issue amount. u/s 69 of the Companies Act, 1956, if within 60 days at least 90% of the public issue amount is not procured by the company, either by subscription, by public and/or by devolvement, the money collected by the Company in the public issue is to be returned to the public. According to the petitioner, the underwriters failed to honour their underwriting commitments, the petitioner M.S. Shoes had to return the entire amount received from the public and consequently suffered heavy losses and damages due to non-performance of the under-writing obligations by the various respondents.

4. In the underwriting agreements entered into with the respondents in the above cases, there was an arbitration clause in each of their agreements and as such the petitioner has filed petitions u/s 20 of the Arbitration Act, 1940 before this Court against the respondents being Suit No. 1299-A/97 and Suit No. 1199-A/98 against 269 underwriters which are pending adjudication by the Court.

5. The petitioner has filed a large number of compensation applications u/s 12B of the MRTP Act before the Commission. The compensation applications were filed after more than five years after the cause of action arose to the petitioner. On 19th September, 2002, the Commission by a common judgment decided 189 compensation applications.

6. The respondents herein have taken two main objections with regard to the maintainability of this petition:

(i) that the petitioner cannot be permitted to initiate parallel proceedings in two Forums;

(ii) the compensation petitions filed by the petitioner have been preferred beyond reasonable period of three years and it has to be held to be time barred.

7. The Commission has rejected the preliminary objection of maintainability of the writ petition on the strength of a large number of judgments delivered by the

Apex Court.

8. The short question which arises for consideration of this Court is, whether the Commission was justified in dismissing the petitioner's petition as barred by limitation?

9. Though the Commission has dealt with a large number of judgments but the main reliance has been placed on the judgment of the Apex Court delivered in Corporation Bank and Another Vs. Navin J. Shah, .

10. Mr. Rajeev Nayar, Sr. Advocate canvassed main submissions on behalf of the petitioner and on behalf of the respondents, main submissions have been addressed by Mr. Manmohan, Mr. U.K. Chaudhary, Senior Advocates and by Mr. Jay Salva and Ms. Ritu Singh Mann, Advocates. It has been canvassed that the present writ petition filed by the petitioner is not maintainable as Section 55 of the MRTP Act 1969 provides for an appeal to the Supreme Court and the present petition is liable to be dismissed only on that ground itself as there is an efficacious alternate remedy available to the petitioner.

11. It is further submitted by the respondents that the impugned judgment of the Commission has correctly upheld the preliminary objection with regard to the maintainability of the compensation applications. It was submitted that Section 12B of the MRTP Act permits for redressal of dispute giving rise to the claim of compensation on alleged breach of contract between the parties from two Forums but the petitioner has to choose either of the two Forums and cannot be permitted Forum shopping under the garb of provisions of Section 12B of the Act. Since the petitioner has already approached this Court in Arbitration proceedings, Therefore, the petitioner is not entitled to file these proceedings. The Commission has dismissed the cases being barred by limitation.

12. Mr. Manmohan, learned senior counsel appearing for the respondent submitted that the Commission's judgment is sound and it based on the ratio laid down by the judgments of the Apex Court. In support of his submissions that these petitions cannot be entertained because the petitioner has not approached the Commission within reasonable time. Reliance has been placed on the judgment of the Corporation Bank (Supra). In this case the court observed that for filing a claim petition at the relevant time, there was no period of limitation under the Consumer Protection Act but that does not mean that the claim petition can be entertained anytime. In this case, the court observed that the claim ought to have been made within reasonable time. The court observed that appropriate standard be adopted for computing reasonable time to raise a claim in a matter of this nature. Learned counsel for the respondent submitted that the Corporation Bank's judgment has been consistently followed in every case by the Commission. In the instant case, on the same analogy, these petitions which have been filed after a lapse of more than five years can be said to have been filed after un-reasonably long delay and these petitions have been rightly dismissed on the ground of limitation that these petitions were not filed within

reasonable period and consequently are barred by limitation. According to the submissions of the learned counsel for the respondents, Article 137 of the Limitation Act provides that any application for which no period of limitation is provided elsewhere, three years period of limitation would be appropriate in civil suit which period is to be read with a statute in view of the Section 41 of the Monopolies and Restrictive Trade Practices Act 1969. According to the respondents the Commission rightly dismissed these cases on the ground of maintainability.

13. Reliance has also been placed by the Commission on its judgment dated 16th May, 2000 delivered in K.K. Savjani v. Madhubhai Rathod Proprietor of Remica Plastics reported in 2000 CTJ 227 . The Commission dealing with compensation application in which cause of action arose in October 1994 and the compensation application have been instituted nearly after five years and seven months on May 2000, while following the judgment of the Corporation Bank held that the compensation application instituted beyond reasonable period of three years and it has to be held to be time barred. The compensation application was rejected only on this ground and the court declined to examine the merits of the case.

14. Reliance has also been placed on the judgment decided by the Supreme Court in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, . The court after examining number of cases came to the conclusion that Article 137 of the Limitation Act will apply to any petition or application filed under any Act to a Civil Court.

15. Reliance has also been placed on one of the decisions of the Commission passed in CA No.26/98 titled M/s. Haryana Flour Mills P. Ltd. vs. Haryana State Industrial Corporation, Chandigarh dated 21.12.2000. The Court in this judgment observed:

"No doubt, no specific provision of law of limitation has been made applicable to the provisions of the MRTP Act, but the Hon"ble Supreme Court in the case of Corporation Bank and Others Vs. Navin J. Shah 2000 CTJ 81 held that even if the Legislature has not provided any limitation for claiming money relief, the claimant must approach the concerned court expeditiously within a reasonable period and the reasonable period of time is to be computed by taking aid of Article 137 of the Limitation Act, which prescribes limitation of 3 years. As such, this decision is binding on us and it has to be seen that whether the claim, as set out and filed by the petitioner on 5.12.1997 against the respondent HSIDC, is well within the period of limitation and as such maintainable."

16. Reliance has also been placed on another judgment passed by the Commission in Rajender Jaina Towers (P) Ltd. v. Lloyd Sales Corporation 2000 CTJ 439 . The Commission observed that application has to be preferred within three years from accruing of the cause of action and since the application was filed after three years, same was dismissed as barred by limitation. Similar view has been taken in another judgment of the Commission i.e. Bhagirathi Plastic

Industries v. M/s. United India Insurance Co. & Anr. 2000 CPJ 23.

17. In Ram Chand and Others Vs. Union of India (UOI) and Others, their Lordships of Supreme Court held:

" The Parliament has recognised and taken note of the inaction and non-exercise of the statutory power on the part of the authorities, enjoined by the provisions of the Act to complete the acquisition proceedings within a reasonable time and because of that now a time-limit has been fixed for making of the award, failing which the entire proceedings for acquisition shall lapse. But, can it be said that before the introduction of the aforesaid amendment in the Act, the authorities were at liberty to proceed with the acquisition proceedings, irrespective of any schedule or time-frame and to complete the same as and when they desired? It is settled that in a statute where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable"

18. In The State of Gujarat Vs. Patil Raghav Natha and Others, the Apex Court observed that where no time is prescribed for exercise of the power under a statute, it does not mean that it can be exercised at any time. Such powers has to be exercised within a reasonable time.

19. In Municipal Corporation of Greater Bombay Vs. Bombay Tyres International Ltd. and Others, the court observed as under:

"In ascertaining what is the reasonable time for claiming refund, the courts have often taken note of the period of limitation prescribed under the general Law of Limitation for filing of suits for recovery of amount due to them. In the present case also that standard adopted by the High Court is the same in ascertaining whether there has been laches on the part of the appellant in seeking relief in due time or not. The finding clearly recorded is that long after the charges had been paid and law had been declared by the Court, the writ petition has been filed and, Therefore, such a refund should not be allowed. We do not think such a view taken by the High Court calls for interference under Article 136 of the Constitution. Hence we dismiss the petition."

20. In State of Kerala and Ors Vs. V.R. Kalliyankutty and Anr, the court observed that when the right to file a suit u/s 70(3) is expressly preserved, there is necessary implication that the shield of limitation available to a debtor in a suit is also preserved. The court further observed that it would be ironic if an Act for speedy recovery is held as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims.

21. Replying to the preliminary submission, Mr. Rajiv Nayar, Sr. Advocate submitted that in Corporation Bank's judgment (supra) the court did not notice earlier judgments of the Apex Court and this judgment requires re-consideration. He placed reliance on France B. Martins v. Mrs. Masalda Maria Teresa Rodrigues (1999) 4 Comp. L.J. 32 in which their Lordships of the Supreme Court observed that when Legislature in its wisdom thought it appropriate not to prescribe the

period of limitation for proceedings under the Act, the Court cannot apply the provisions by implication.

22. Reliance has also been placed on Collector of Central Excise, Jaipur Vs. M/s. Raghuvar (India) Ltd., . In para 13 of this judgment it has been laid down that it is not for the courts to import any specific period of limitation by implication as the limitation must be specifically indicated and prescribed therefore.

23. The Court in this case also observed that it is not for the courts to import any specific period of limitation by implication, where there is really none, though courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period.

24. Reliance has also been placed on Ishar Singh Vs. Financial Commissioner and Others, . The court observed that where no limitation is prescribed in an Act, Limitation Act is handicap in such proceedings. Limitation provisions of a different Act cannot be made applicable in absence of any legal basis therefore.

25. Therefore, for filing application u/s 143 of Pepsu Tenancy in Agricultural Lands Act, 1955, limitation prescribed u/s 50 of the Punjab Tenancy Act, 1887 would not apply. No period of Limitation would govern such application. The court observed that it is not the function of the Court to prescribe their limitation where the Legislation in its wisdom has thought it fit not to prescribe any period. The Court admittedly interpret law and do not make laws. Personal views of the judges presiding over the Court cannot be to authorise them to interpret law in such a manner which would amount to Legislative intentionally left over by the Legislature.

26. We have heard the learned counsel for the parties at length and perused the various judgments delivered by the Apex Court and other Courts carefully. There is no doubt that the Legislature in its wisdom has not prescribed any limitation for preferring compensation petition u/s 12B of the MRTP Act. There are large number of similar Acts where the legislature in its wisdom has not specified a period of limitation. On proper analysis of various judgments of the Apex Court and the other courts, the ratio which clearly emerges is that all those cases where the legislature has not specified any statutory time limit, the claim has to be filed within reasonable time. In afore-mentioned judgments of the Apex Court particularly in the case of Corporation Bank (Supra) the Supreme Court observed that Act in which no statutory limitation has been prescribed that does not mean that claim petition can be entertained anytime. The ratio of the judgment is that the claim ought to be made within reasonable period. What is the reasonable time to lay a claim depends upon the facts of each case. In the legislative wisdom, three years period has been prescribed to lay a claim for money. The court observed that the period of three years is the reasonable period to raise a claim in a matter of this nature. The claim of the petitioner is in the nature of a money claim and on the analogy of the Corporation Bank (Supra) the claim

ought to have been filed within the statutory limit for filing such claims by way of civil suits, i.e., three years. In the Corporation Bank's (Supra) case their Lordships of the Supreme Court examined the facts of the case in detail and thereafter observed that the claim involved in that case was essentially for money. In this view of the matter, the court observed that the period of three years is the reasonable time to raise a claim in a matter of this nature. This is also in consonance with the provisions of the Limitation Act.

27. Learned counsel for the petitioners do not dispute the proposition that in cases, where there is no statutory limit, a claim ought to be filed within a reasonable period. The grievance of the petitioner is that in the instant cases without examining the facts and circumstances of the petitioner's cases the Commission applied the limitation of three years and dismissed the petitioner's cases. He submitted that these cases deserve to be remanded to the Commission for examining them on the facts and circumstances of each case.

28. The cause of action in these cases arose somewhere in the year 1995. These cases have been pending since then. Remanding these cases at this stage to the Commission would mean further delay in disposal of these cases. To satisfy the petitioner even from this angle also, instead of remanding these cases to the Commission to avoid further delay we have carefully examined the facts and circumstances of these cases in extenso. In these cases the petitioner's have calculated their claims for exact amounts because of deficiency of services by the undertakers/brokers who offered their underwriting and/or procurement services for public issue of the petitioner in 1995. All claims cases of the petitioners are money claims.

29. Their Lordships of the Supreme Court aptly observed in the Corporation Bank (supra) that even when the Legislature has not specified any statutory time limit, the claim has to be filed within reasonable time. The Court further held what is reasonable time to lay claim depends upon the facts of each case. In the Legislative wisdom three years period has been prescribed to lay a claim for money. The Court observed that the period of three years is reasonable time to raise a claim in a matter of this nature. The claim which has been sought by the petitioner is in the nature of a money claim and on the analogy of Corporation Bank's Case (supra), the claim ought to have been filed within statutory period of three years. The Commission has correctly appreciated the ratio of the Corporation Bank. It was also submitted by the counsel for the respondent that the Commission has been consistently following the ratio of Corporation Bank in similar cases for several years.

30. In our considered opinion, no interference is called for with the impugned judgment of the Commission. These petitions being devoid of any merits and are accordingly dismissed. In the peculiar facts and circumstances of the case, we direct the parties to bear their own costs.

31. Before we part with these cases we deem it appropriate to observe that the

legislature may consider specifying period of limitation for claiming money relief in various Acts where it has not been specified to avoid uncertainty, harassment and unnecessary litigation in various Forums and Courts. A copy of the judgment be sent to the Secretary, Ministry of Law, Government of India and to the Law Commission of India with a week.