

(2010) 02 PAT CK 0009
In the Patna High Court

National Insurance Company

APPELLANT

Vs

Rabri Devi and Another
 The New India Assurance
Company Limited Vs Savitri Devi and Others

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 02 PAT CK 0009

Judgement

Ramesh Kumar Datta, J.

I.A. No. 6595/2009 in M.A. No. 569/2009:

With

I.A. No. 6732/2009 in M.A. No. 591/2009:

1. Both the interlocutory applications have been filed for condonation of delay, of 9 days and 23 days respectively, in filing the respective appeals. However, learned Counsels for the appellants in both the appeals seek to argue that as a matter of fact both the appeals were filed/presented within the statutory period but only on the ground that they were not accompanied by challans showing deposit of the statutory amounts, the filing was not accepted and the appeals were stated to have been filed on the date when the statutory amount was deposited and the copy of the challans filed.

2. In M.A. No. 569/2009, the memorandum of appeal was filed on 6.10.2009, but without the challan showing the deposit of the statutory amount of Rs. 25,000/- or 50% of the awarded amount whichever was less. The stamp reporter gave a report that the appeal was "in time till today", i.e., 6.10.2009, but further stated however, that this memo of appeal will be entertained by this Court only when the appellant deposits with this Hon'ble Court the amount of money as envisaged u/s 173 of the Motor Vehicles Act, and accordingly the appeal was shown as filed on 15.10.2009.

3. In M.A. No. 591/2009, the memo of appeal was presented/filed on 5.10.2009

and a similar report was made by the stamp reporter that it was "in time till today", i.e., 5.10.2009 but the case was shown to have been filed on 28.10.2009 for the same reason in the other appeal.

4. Learned Counsels for the appellants submit that u/s 173 of the Motor Vehicle Act, 1988, an appeal may be preferred to the High Court by any person aggrieved by an award of a Claims Tribunal within 90 days from the date of the award and under the proviso such an appeal shall not be entertained by the High Court unless he has deposited Rs. 25,000/- or 50% of the amount so awarded in the manner directed by the High Court. It is urged by learned Counsels that entertainment of the appeal does not mean the same thing as the filing or presentation of the same and the word "entertain" means when the matter is actually dealt with or actually admitted to consideration by the Court. It is thus submitted by learned Counsels that both the appeals were filed within the time allowed by the Act and simply for the reason that the statutory amount was deposited subsequently, it cannot be held that the appeals are barred by limitation and the filing of the appeal could not have been refused on the said ground.

5. Learned Counsels point out that the Registry of this Court has refused to entertain these appeals only on the basis of a notice which had appeared on the daily cause list of this Court on 15.4.2009 and other days wherein it was directed that all Miscellaneous Appeals should be filed after removing the defects and should be accompanied, inter alia, with duly filled in challan with draft/cheque and after removal of defects as pointed out by the stamp reporter, number of appeal will be filled up in the file as well as in the challan and the challan will be taken in to record. It is submitted by learned Counsel that any such administrative direction cannot override the statutory requirements as laid down by the Legislature and the filing of the appeal could not have been refused by the Registry contrary to the statutory requirements.

6. Learned Counsels in support of the aforesaid propositions relied upon a decision of a three - Judges Bench of the Supreme Court in the case of Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, of which it has been held as follows:

7. To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word "entertained" in this context? Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The dictionary meaning of the word "entertain" was brought to our notice by the parties, and both sides agreed that it means either "to deal with or admit to consideration". We are also of the same opinion. The question, therefore is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso? Is it "entertained" when it is filed or is

it "entertained" when it is admitted and the date is fixed for hearing or is it finally "entertained" when it is heard and disposed of? Numerous cases exist in the law reports in which the word "entertained" or similar cognate expressions have been interpreted by the courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present, we must say that if the legislature intended that the word "file" or "receive" was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expressions have in fact been used. For example, under Order 41, Rule 1 of the CPC it is stated that a memorandum shall not be filed or presented unless it is accompanied etc., in Section 17 of the Small Causes Courts Act, the expression is "at the time of presenting the application". In Section 6 of the Court Fees Act, the words are "file" or "shall be received". It would appear from this that the legislature was not at a loss for words if it had wanted to express itself in such forceful manner as is now suggested by counsel for the State. It has used the word "entertain" and it must be accepted that it has used it advisedly. This word has come in for examination in some of the cases of the Allahabad High Court and we shall now refer to them.

10. In our opinion these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration". It would therefore appear that the direction to the court in the proviso to Section 9 is that the court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the court for the first time. In the decision on which the Assistant Commissioner relied, the learned Chief Justice (Desai, C.J.) holds that the words "accompanied by" showed that something tangible had to accompany the memorandum of appeal. If the memorandum of appeal had to be accompanied by satisfactory proof, it had to be in the shape of something tangible, because no intangible thing can accompany a document like the memorandum of appeal. In our opinion, making "an appeal" the equivalent of the memorandum of appeal is not sound. Even under Order 41 of the Code of Civil Procedure, the expressions "appeal" and "memorandum of appeal" are used to denote two distinct things. In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decision by a higher Court of the decision of an inferior court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed. When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax.

7. Learned Counsels also rely upon a subsequent decision of the Supreme Court in the case of Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through Legal representatives, in which the aforesaid decision has been relied upon and

applied.

8. They further rely upon a Division Bench decision of this Court in *Smt. Shubha Sinha Vs. Veer Kuwar Singh University and Others*, , in which it was held that the date on which the memo of appeal is first presented in the office of the Registry of the Court would be the date of filing of the appeal for the purpose of computation of period of limitation and not the subsequent date on which it is re-presented after removing the defects as may be pointed out by the stamp report. The said proposition is contained in paras 3 and 4 of the decision in the following terms:

3. We are of the opinion that the office objection must be over-ruled. When the memo of appeal was first presented in court on 21.12.2007 the terminal point of filing appeal had arrived. It is with reference to that date of presentation of memo of appeal alone that the time taken in filing the appeal can be computed, which is the only relevant date of presentation of the appeal inasmuch as the other defects can only be brought out after accepting the presentation of appeal and examining the memo filed by the appellant. The fact that according to practice of the court memo of appeal is not kept in the office of registry requesting the counsel to remove the defects in the court itself, but is returned to appellant for removing those defects outside court, to save further date of presentation or filing of memo of appeal in court, and allow the limitation to expire. To illustrate if the memo of appeal is filed in Court on the last date of expiry of limitation with some technical or other curable defects and instead of keeping the papers in court the same are returned to the counsel to resubmit after removing such other defects the appeal will become barred by the time and is resubmitted. But if it is kept in Court the same will be within limitation, such a result is not envisaged under law nor it can be countenanced.

4. It can be viewed from yet another angle if 17.12.2007 is accepted the date of presentation of appeal to the court, then the stamp reporter would also not have jurisdiction to examine the memo and find the defects pointed to the counsel and require the same to be removed. The memo was presented on 17.12.2007 but was not kept in the court but returned to the counsel is reflected in court proceedings. Presentation of the appeal on 17.12.2007 was complete. The other part of the transaction namely, returning the memo of appeal to the learned Counsel for removing the other defects is based on procedure of the court in dealing with a file after presentation and would not affect the date of filing of appeal so as to alter the computation of period of limitation. The period for the purpose of limitation has to be counted from the date of judgment up to first presentation. On such consideration there is no denial that the presentation of the appeal was within the limitation.

9. For a consideration of the aforesaid submissions of learned Counsels, it may be apt to quote the relevant statutory provisions contained in Section 173 of the Motor Vehicles Act, 1988, which is as follows:

Section 173. Appeals. - (1) Subject to the provisions of Sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty percent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

10. It may also be appropriate to quote here the notice that was issued in the daily cause list of this Court dated 15.4.2009 which is in the following terms:

Notice: - (i) All Miscellaneous Appeals should be filed after removal of defects.

(ii) Take notice that in Appeals filed u/s 173 M.V. Act, the memo of appeal should be accompanied with Judgement, Award, Vakalatnama and duly filled up challan with draft/cheque and after removal of defects, as pointed out by the stamp reporter, number of appeal will be filled up in the file as well as in the challan and the challan will be taken in to record.

11. On a consideration of the aforesaid provisions of the Motor Vehicles Act, it is evident that while the main part of Sub-section (1) of Section 173 provides that the appeal may be preferred before the High Court from the award of a Claims Tribunal within 90 days from the date of the award, it is only in the proviso that the legislature has laid down a condition that the appeal shall not be entertained by the High Court unless the person who has presented it, has deposited a sum of Rs. 25,000/- or 50% of the amount awarded whichever is less in the manner directed by the High Court.

12. From a consideration of the provision it is evident that while in the main part of the said provision the legislature has used the words "prefer an appeal", in the proviso the phrase used is "no appeal...shall be entertained." Thus the legislature itself has made a clear distinction between the requirements of preferring an appeal within a period of 90 days and its being entertained by the High Court subject to the precondition of deposit. It is evident that the appeal itself must be filed within 90 days from the date of the award in order to be within the time allowed. It is a different matter that so far as the entertainment of the appeal is concerned, as held by the Apex Court in Lakshmiratan Engineering Works Ltd. Case (supra), the word "entertained" has to be read as the stage when the court proceeds to admit to consideration the appeal; this would be the stage when the case is taken up by the court for the first time. Thus entertainment of an appeal is not the same thing as the preferring or filing the same as the said distinction

has been clearly brought out in the said decision of the Supreme Court. That being the position as laid down by the statute itself, I am of the view that no administrative directions contrary to the statutory provision could have been issued directing that while filing the appeal, the memo of appeal should be accompanied by a duly filled in challan with draft/cheque. It is evident from the provision itself that the only discretion given to the High Court is regarding the manner in which the statutory amount is to be deposited and not with respect to anything else.

13. The aforesaid view, however, does not mean that a person may file an appeal and keep it pending indefinitely at his own sweet will without depositing the statutory amount; it would be open to the registry and also the Bench to fix a reasonable time after the filing of the appeal for deposit of the said amount and on failure to so deposit within the time granted, the Bench may even dismiss it.

14. It is also evident from a consideration of the Division Bench decision of this Court in the case of Smt. Shubha Sinha's case (supra) that the date of filing of a memo of appeal would be the date when it is presented in the office of the Registry and not any subsequent date when it is re-filed after removal of any curable defects.

15. For the aforesaid reasons, this Court is of the view that both the Miscellaneous Appeals had been filed within the statutory time provided under the Act and thus, there being no delay in filing the same, the question of condonation of delay by this Court does not arise at all.

16. Both the interlocutory applications, I.A. Nos. 6595 and 6732 of 2009 are accordingly disposed of.

17. Since the Miscellaneous Appeals have been heard together on the interlocutory applications only for the purpose of decision on the aforesaid common point, they are now directed to be delinked and thereafter listed and taken up separately.

18. Let a copy of this order be communicated to the Registrar General of this Court for appropriate compliance.