

(1987) 09 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 2730 of 1983

New India Structural and Crane Works

APPELLANT

Vs

Abdul Rashid Abdul Majid and Another

RESPONDENT

Date of Decision : 14-09-1987

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 26(2)
Limitation Act, 1963 — Section 29(2), 5

Citation : (1988) 1 BomCR 320

Hon'ble Judges : V.V. Vaze, J;P.B. Sawant, J

Bench : Division Bench

Advocate : C.S. Bhandari, for the Appellant; Nishetta Mhatre, for Pankaj Patel, for the Respondent

Judgement

V.V. Vaze, J.—Do the provisions of section 5 of the Limitation Act, 1963 regarding extension of prescribed period for sufficient cause for making an application apply to the making of an application under Rule 26(2) of the Industrial Disputes (Bombay) Rules, 1957 to set aside an award made by a Labour Court?. This is the question thrown up by the present writ petition.

2. The Deputy Commissioner of Labour (Conciliation), Bombay made a reference u/s 10(1)(C) of the Industrial Disputes Act, to the 6th Labour Court at Bombay in Reference (IDA) No. 351 of 1980 for adjudication of the industrial dispute between M/s. New India Structural Crane Works-a Partnership firm-and their workman Abdul Rashid Abdul Majid. The dispute pertained to reinstatement of the workman with full back wages as the services of the workman were terminated orally from 13th December, 1979 without any notice or retrenchment compensation. The employer-firm did not put in appearance before the 6th Labour Court at Bombay though notice of reference was served on them and hence the Labour Court heard the reference ex parte against them and by its award dated 30th September, 1981 directed the firm to reinstate the workman with continuity of service and full back-wages.

3. The firm received a copy of the award on 19th November, 1981 and on 24th December, 1981 filed an application for setting aside the ex parte award after pleading that the delay of six days may be condoned. It was submitted that the delay resulted from the fact that Chandrakant Patel the working partner was out of station and the other partner Rajnikant Patel having suffered from slipped-disc lost sight of the notice of hearing.

4. The 6th Labour Court after referring to Rule 26(2) of the Industrial Disputes (Bombay) Rules, 1957 came to the conclusion that the application for setting aside the ex parte order should have been filed on 19th December, 1981 and that "there is no provisions for application of any provisions of the Limitation Act to the proceedings under the Industrial Disputes Act." Concluding that it had no power to condone the delay, the Labour Court dismissed the application against which the present writ petition has been filed, by the employer.

5. As the question raised in this writ petition revolves around the interpretation of some provisions of the Limitation Act, it would make for better appreciation of the matter in controversy if we delve into the development of the statutory law of limitation and the reasons that led to the passing of the new Limitation Act of 1963. As statute of limitation is a statute of repose, peace and justice. It is one of repose because it extinguishes stale demands and quiets title and restricts controversies to a fixed period of time lest the controversy should become immortal while men are mortal. It secures peace as it ensures security of rights and it secures justice as by lapse of time evidence in support of rights may have been destroyed. Under the Hindu Jurisprudence there was no law of limitation as such but a period of 20 years was laid down by certain Smriti writers for the acquisition of title by prescription. The first attempt to introduce a uniform law of limitation applicable alike to the charter courts was made by the Limitation Act, 1859 (XIV 1959) which was followed by Act IX of 1871 and Act XV of 1877. Ultimately an Act to consolidate and amend the law for the limitation of suits and for other purposes came to be passed, as the Indian Limitation Act IX of 1908 Act"). The first law Commission of India chaired by M. C. Setalvad submitted its third report on the Limitation Act, which led to the passing of the Limitation Act, 1963.

6. The Commission found that the word "application" has not been defined in the Act and observed:

"We recommend that a new definition of the word "application" so as to include any petition, original or otherwise, should be added. The object is to provide a period of limitation for original petitions and applications under special laws as there is no such provision now. Consequential alterations in the definitions of the word "applicant" should also be made."

This resulted in the following changes indicated below:-

1908 Act. 1963 Act. Sec. 2. In this Act unless there Sec. 2. In this Act, unless is anything repugnant in the context otherwise re- the subject or context,---

quires,--- i) "applicant" includes any (a) "applicant" includes--- person from or through (i) a petitioner; whom an applicant derives (ii) any person from or his right to apply. through whom an applicant derives his right to apply; (iii) any person whose estate is represented by the applicant as executor, administrator or other representative; (b) "application" includes a petition 7. While commenting on this changed definition of the word "applicant" and "application contained in section 2(a) of 1963 Act the Supreme Court in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, observed that "it indicates the object of the Limitation Act to include petitions original or otherwise under special laws" and held that the application can be under any special Act, like a petition u/s 16(3) of Telegraph Act claiming enhanced compensation. With this changed definition, section 5 of 1963 Act which deals with extension of period in certain cases was amended to read thus

1908 Act. 1963 Act. "5. Any appeal or application for a "5. Any appeal or application, other review of judgment or for leave to than an application under any of appeal or any other application to the provisions of Order XXI of the which this section may be made of Code Civil Procedure, 1908, may applicable (by or under any be admitted after the prescribed enactment) for the time being in period if the appellant or the force may be admitted after the applicant satisfies the Court that period of limitation prescribed he had sufficient cause for not therefore, when the appellant or preferring the appeal or making the applicant satisfies the Court that application within such period. he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.--- x x x x Explanation.--- x x x x x x x x x" x x x x x" 8. We may now turn to section 29(2) of 1908 Act which made the provisions of sections 4, 9 to 18 and 22 for the purpose of determining any period of limitation prescribed under special or local law. The section read as :---

"29(2). Where any special or local law prescribes for any suit appeal or application a period of limitation different from the period prescribed therefore by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefore in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law---

(a) the provisions contained in section 4, section 9 to 18 and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

Commenting on this sub-section the Law Commission observed :---

"The combined operation of sub-clauses (a) and (b) of subsection 2 is that so far as special and local laws are concerned, only sections 4, 9 to 18 and 22 of the Act apply and that the subject to such modifications as may be prescribed. We consider that there is no need for this restriction and that the principles

contained in sections 4 to 25 should be made applicable to all special and local laws, leaving it open to the legislature to exclude the application of any or all of these sections in any given case."

9. With this recommendation the scope of section 29(2) was enlarged so as to include all the sections from 4 to 25 to any suit or appeal or application under a special or local law and the same now reads as :---

"29(2). Where any special or local law prescribes for any suit appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

10. The application of subsection (2) of section 29 of the 1963 Act came up for consideration before the Supreme Court in *The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly*, . Sub-section (3-B) of section 10 of the U.P. Sales Tax Act, prescribed a period of one year from the date of service of the order for filing a revision against the appellate order of the Assistant Commissioner (Judicial) Sales Tax, Bareilly. The question agitated before the Revisional Authority was whether the revision petitioner is entitled to exclude the time spent for obtaining a copy of the appellate order u/s 12(2) of 1963 Act. After going through U.P. Sales Tax Act, the Court observed that it answers the description of a special or local law and there is nothing in the U.P. Sales Tax Act expressly excluding the application of section 12(2) of the Limitation Act for determining a period of limitation prescribed for revision application. On these basis the Court concluded that the provisions of section 12(2) of the Limitation Act of 1963 can be relied upon in computing the period of limitation prescribed for filing a revision petition u/s 10 of the U.P. Sales Tax Act.

11. An interesting case under the Punjab Land Revenue Act, arose before the Delhi High Court. Certain property in Nizamuddin, West New Delhi was put to auction by the Collector, Delhi in 1971 in order to realise certain sum of money due to the department of rehabilitation of Delhi Administration and was purchased by the appellant in the said auction. The sale was confirmed by the Lt. Governor, Delhi on 23-12-1971 and the possession of the property was given to the appellant/auction purchaser.

12. Section 91 of the Punjab Land Revenue Code (17 of 1877) as applied to Delhi provided for making an application to set aside the sale within the 30 days from the date of the sale. However respondent No. 1 filed the application under that section on 19-2-1972 and prayed for condemnation of delay u/s 5 of the Limitation Act, 1963 on account of the fact that respondent No. 1 came to know of the sale only on 9-2-1972.

13. Repelling the argument that section 5 of the Limitation Act, is not applicable because Lt. Governor, before whom the application was filed, is not a Court, but a persona designata the Court said :

"We feel that the argument based on the contention that the application under a special Law must necessarily be to a Court, before the provisions of Limitation Act are attracted is not borne out by any precedent or principles of law. This argument does not appreciate the difference between a case where there is no period prescribed by a special law and where it is so provided. In the former instance, a party will have to invoke Article 137 of Schedule to Limitation Act 1963, and this can be resorted to for filing an application under any Act (vide Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, . Such an application alone is required to be filed before a Civil Court. But in case of latter kind as in the present case where the period is prescribed under a special law like the Act (viz. Punjab Land Revenue Act,) Article 137 of Schedule to Limitation Act is not being resorted to at all and the requirement of application being to a Court does not necessarily arise."

Raj Chopra Vs. Shanno Devi and Others, .

14. In Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, an argument was sought to be advanced that applications filed by the appellants against the L.I.C. of India u/s 33C(2) of the Industrial Disputes Act, 1947, were barred under Article 137 of the Limitation Act, 1963, in so far as the claim was for the period beyond three years. That article prescribes a period of three years for any other application for which no period of limitation is provided elsewhere in that division. This Article read with section 3 would have disentitled the applicant from claiming any relief u/s 33C(2) if it were to be held that Article 137 applies to such applications. The question of application of subsection (2) of section 29 of 1963 Act, did not and in the nature of things could not arise in this case. That is so because section 33C(2) of the Local or special Act did not prescribe any period of limitation. It is only when the local or special Act prescribes a period of limitation different from the period prescribed under the 1963 Act, that the sub-section (2) of section 29 gets activated. Such being the position, Nityanand's case has no application to the facts of the present case because unlike section 33C(2) which prescribed no period of limitation Clause 2 of Rule 26 of the Industrial Disputes (Bombay) Rules 1957 does prescribe a period of 30 days for setting aside the ex parte award of decision made by the Labour Court.

15. The High Court in Raj Chopra's case (supra) has, with respect even gone further and observed that an application under a special or local law need not necessarily be to a Court. For our purpose, it is sufficient to note that the view we are taking viz. that the application made to a tribunal which may not be a Civil Court but has all the attributes (and not mere trappings) of a Court, will be covered by section 29(2) gets support from this decision .

16. Even though a Labour Court is not a Court for the purposes of application of Article 137 of the schedule to the 1963 Act, it would be a Court for the purposes of subsection (2) of section 29 so as to make a provision of section 5 of the 1963 Act applicable in relation to extending the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring an application within the said period.

17. The scheme of the Industrial Disputes Act, shows that it was an Act to make a provision for the investigation and settlement of Industrial Disputes and has created a hierarchy of tribunals for that purpose. A Tribunal or an authority shall be a Court if it possesses certain attributes in its constitution and function. The first would be that the source of the power of the tribunal should be a state as fountain of justice and the tribunal should be charged with and exercise the inherent powers of the State. Section 7 of the Industrial Disputes Act, shows that the Labour Court owes its genesis to a notification in the official gazette by the appropriate Government and is charged with the function of "adjudication of industrial disputes relating to any matter specified in the second schedule and for performing such other functions as may be assigned to them under the Act. Secondly the jurisdiction to adjudicate the list between contesting parties should be conferred on the tribunal by law and should not depend on any voluntary act or submission of parties. This follows from section 10 of the Industrial Disputes Act where the appropriate Government is empowered to refer a dispute to a Labour Court for adjudication and hence the right to move the tribunal is conferred on the aggrieved party by law. Thirdly the tribunal in adjudicating the disputes must follow prescribed or established procedure giving opportunities to the parties to adduce evidence and make submissions. Rules 14 to 31-A of the Industrial Disputes (Bombay) Rules, 1957 provide for the procedure to be adopted by the Labour Court regarding notices to be served on parties directing them to file their statements and claim or written statement, allowing amendments to the pleadings recording of evidence administrations of oath, conducting the proceedings in public, proceeding ex parte, inspection of the premises and machinery; these provisions are all akin to the procedure followed by the common law courts. Fourthly, the tribunal in arriving at its decision should act judicially and according to law following the principles of natural justice and fair play and not on any other consideration of policy or expediency. This has been provided for by Rule 30 of the Industrial Disputes (Bombay) Rules where a decision is to be by a majority and sub-section (3) of section 7 prescribing the qualifications for the appointment of a person to the Labour Court shows that the person should have held judicial office for not less than seven years or have practised as an advocate for not less than seven years in the High Court or subordinate courts. Fifthly, the decision of the tribunal should be final subject to appeal or revision or powers of superintendence and binding on parties. This again has been provided for in sub-section (2) of section 17 of Industrial Disputes Act under which the award published by the Labour Court "shall be final and shall not be called in question by any Court in any manner whatsoever"

subject however to writ jurisdiction of the High Court. Lastly the decision of the tribunal should be enforceable through the process of law. Section 33C(1) makes a provision for recovery of any money due to employee under the award made by Labour or Industrial Court by an application to State Government u/s 33C(1) or to the Labour Court u/s 33C(2) under the execution proceedings.

Thus all the attributes and incidents of a Court being present in the scheme of constitution of the Labour Courts, the conclusion is inescapable that the Labour Court is a Court for the purposes of application of provisions of sub-section (2) of section 29 of the Act. This is so even though it is not a Court for destroying the right of the employee for filing the application u/s 33C(2) after taking recourse to Article 137 of the 1963 Act. See *Indian Iron Steel Co. v. Shish Ram* 83 Cal. WN 786.

18. A plain reading of section 29(2) shows that the provisions contained in sections 4 to 24 (inclusive) have been made to apply to an application under a special or local law and section 3 which provide for bar of limitation of a suit or application shall apply to one made under the special or local law with the difference that the period of limitation prescribed in the special or local law will be substituted for the period of limitation contained in the schedule to the Limitation Act. The definition of the word "applicant" in the Clause (a) of section 2 and of "application" in Clause (b) of the same section is wide enough to include any application under a local or special law. There is nothing in the Industrial Disputes to "exclude the provisions of section 5 of the Limitation Act" to proceedings under the former Act. In view thereof we find that the Labour Court erred in denying to itself a jurisdiction conferred by section 5 of the Limitation Act in the matter of extension of prescribed period when the applicant has a sufficient cause for not making an application within the Prescribed period. Rule is made absolute. The order of the Labour Court is set aside and the matter is remanded for proceeding in accordance with law on merits. The amount of Rs. 12,000/- deposited in pursuance of the order of this Court dated 17-8-1983 may be invested in nationalised bank in Fixed Deposit initially for a period of one year. Since the matter is pending for long, it should be decided as expeditiously as possible but not later than four months from today. The employer-petitioner to file his written statement in the Labour Court within two weeks from the receipt of the writ. No order as to costs.