

(2016) 12 MAD CK 0021
In the Madras High Court
Case No : W.P.(MD) No. 14467 of 2013

P. Ravi

APPELLANT

Vs

The Joint Registrar of Cooperatives Madurai Region, Madurai

RESPONDENT

Date of Decision : 09-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Tamil Nadu Co-operative Societies Act, 1983 — Section 153

Citation : (2017) 2 CTC 584 : (2017) 2 LW 91 : (2017) 2 MLJ 230 : (2017) 1 WritLR 355

Hon'ble Judges : Mr. R. Suresh Kumar, J.

Bench : Single Bench

Advocate : Mr. J. Gunaseelan Muthiah Government Advocate, for the Respondents; Mr. S. Ajay Justice for Mr. T. Lajapathi Roy, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Mr. R. Suresh Kumar, J. - The petitioner, challenging the order passed by the respondent in proceedings Na.Ka.No.1725/2013 sapa dated 05.08.2013, has come out with the present writ petition seeking for a writ of certiorarified mandamus.

2. According to the petitioner, when the petitioner was working as a Salesman at Vikramangalam Primary Agricultural Cooperative Bank, Madurai District, disciplinary proceedings were initiated against the petitioner and a charge memo dated 17.10.2011 was served on him and after enquiry by order dated 23.05.2012, the petitioner was terminated from service.

3. As against the said order of termination of service, the petitioner preferred a revision under Section 153 of the Tamil Nadu Cooperative Societies Act (hereinafter referred to as "the Act") before the respondent on 07.08.2012. Since the said revision petition was not considered and decided at an early date,

the petitioner had come before this Court by filing W.P.No. 6197/2013, wherein, this Court by order dated 17.04.2013, directed the respondent to dispose of the revision petition dated 07.08.2012, preferred by the petitioner under Section 153 of the Act within a period of three months.

4. Pursuant to the said order of this Court, the revision petition of the petitioner was taken up by the respondent. However, instead of deciding the same on merits, the respondent has rejected the revision petition on the ground of limitation by order dated 05.08.2013, which is impugned herein. Challenging the said order of rejection, the present writ petition has been filed.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

6. The learned counsel for the petitioner would contend that the revision petition, in fact, was filed in time i.e., within 90 days, as contemplated as a limitation for filing the revision under Section 153 of the Act and therefore, the same ought to have been considered on merits. In spite of the order passed by this Court as referred to above in the said writ petition, on 17.04.2013, the respondent, instead of deciding the revision on merits, rejected it by a cryptic order on the ground of limitation only.

7. The learned counsel for the petitioner would further submit that even though the petitioner had filed the revision within time, the same was not acknowledged by the respondent, as an abundant caution, the petitioner has also filed a petition to condone the delay of filing the revision petition, which, according to the petitioner was 265 days and again a copy of the revision was also sent to the respondent. Only on the subsequent sending of the copy of the revision along with the condone delay petition, as an abundant caution, the same was taken into account by the respondent for the purpose of limitation and only based on which such rejection has now been passed. Assuming that the said revision was filed belatedly, the necessary petition to condone the delay of 265 days by invoking Section 5 of the Limitation Act had to be ordered and accordingly, the revision had to be decided on merits.

8. In this regard, the learned counsel for the petitioner would rely upon a Division bench judgment of this Court reported in 2005 (1) CTC 753 [Indira Devi v. Inspector General of Registration, Chennai and 28 others] and also heavily relied upon the unreported decision of this Court made in W.P.(MD) No.452/2012 dated 26.03.2013.

9. In view of the said decisions of this Court, the learned counsel for the petitioner submitted that the revision ought to have been entertained by condoning the delay. Therefore, the impugned order rejecting the revision only on the ground of limitation is unsustainable.

10. Per contra, the learned Government Advocate would contend that a revision will lie under section 153 of the Act, provided, that the same is filed within 90

days from the date of receipt of the copy of the order. Here, admittedly, the petitioner had submitted the revision petition belatedly nearly after 8 months and this factor cannot be disputed in view of the own action of the petitioner in filing a petition to condone the delay of 265 days. Had the revision been filed in time, the petitioner would not have filed a petition to condone the delay. Since there is no provision to condone the delay beyond 90 days, as it is not expressly provided under the Act or Rules made thereunder, the scope of considering the delayed revision would almost nil. Therefore, the respondent has rightly rejected the revision of the petitioner on the ground of limitation. Therefore, the impugned order is sustainable one, which needs no interference from this Court.

11. This Court have considered the said rival submissions.

12. The only issue to be decided here is as to whether the order impugned passed by the respondent on the ground of limitation in entertaining the revision petition filed by the petitioner under section 153 of the Act is in consonance with the law, which is prevailed or is invoked. Insofar as the said claim of the petitioner that the revision petition was filed in time, there is no proof to show that the petitioner has filed the revision petition in time, because the petitioner himself had chosen to file a petition to condone the delay of 265 days, which of his act itself, shows that the revision was not filed in time.

13. The next question would be as to whether the respondent being the revisional authority has got power to entertain the revision, even beyond the 90 days time as stipulated under the Act and under such circumstances, whether the revisional authority has got power to entertain any application to condone the delay by invoking section 5 of the Limitation Act. This issue had been considered by this Court in some earlier occasions and in one case, as relied upon by the learned counsel for the petitioner, i.e., 2005 (1) CTC 733 cited supra, a division Bench of this Court has held at Paragraph Nos.6 and 7, which reads thus:

"6. Inasmuch as there is a specific provision enabling the aggrieved person to file an appeal to the appellate authority, the first respondent herein viz., the Inspector General of Registration, as rightly observed by the Division Bench, unless the copy of the order is furnished/served on the aggrieved person, it would not be possible for him to file the appeal. We are in respectful agreement with the view expressed by the Division Bench.

7. In addition to this, as rightly pointed out by the learned counsel for the petitioner, inasmuch as there is no specific exclusion of Section 5 of the Limitation Act in the Rules, we are of the view that taking note of the fact that copy of the order passed by the 2nd respondent dated 28.11.2002 has been served/received by the appellant only on 17.12.2002 and the appeal filed by the appellant on 10.02.2003 before the first respondent is well within time. The first respondent has committed error in dismissing the appeal stating that the same is barred by limitation. The impugned order of the first respondent dated

10.03.2003 is set aside. The first respondent is directed to hear the appeal on merits within a period of three months from the date of receipt of copy of this order after affording opportunity to all the parties concerned."

14. In yet another case, arising out of the authority under the Tamil Nadu Payment of Subsistence Allowance Act 1981, a similar situation arisen where an appeal/revision was not entertained by the authority and was returned with the return memo stating that the revision was not filed in time. In this regard, when the said return memo was challenged before this Court in W.P. No.29347/2005, I had an occasion to consider the same and by my order dated 17.11.2016, I have held that if the application under Section 5 of the Limitation Act was filed, the same could have been entertained, even though there is no specific provision to condone the delay in the Act and in this regard, the earlier judgment of this Court in A. Arul Jothi v. Deputy Commissioner of Labour, Salem, and another reported in 2002 (3) LLN 544 was taken into consideration.

15. In the said judgment, cited supra, in Arul Jothi's case, this Court had held that if there is no specific exclusion of Section 5 of the Limitation Act, certainly, the authorities, who are quasi judicial in nature, can invoke the provisions of Section 5 of the Limitation Act and if such application is filed, the same can very well be entertained.

16. The said analogy though was applied in the said case by myself as there was no application specifically under Section 5 of the Limitation Act by the petitioner in the said writ petition, I held in the said decision dated 17.11.2016 in W.P. No.29347/2005 in the following terms:

"14.As far as the legal submissions made by the respective counsel are concerned, the original order by the second respondent was passed on 03.10.2002 and the same was immediately, communicated to the petitioner. However, the petitioner had filed a petition to set aside the order only on 06.06.2005 before the second respondent. Therefore, there is a delay of more than 2? years occurred in filing the said petition. The fact remains that while filing the said petition, under Rule 5(7) of the Rules, no petition was filed by the petitioner before the second respondent either under Section 5 of the Limitation Act or any other provision of the Rules, seeking to condone the delay of filing the petition under Rule 5(7) of the Rules as the same should have been filed within 30 days as contemplated under the said Rule itself. If at all, any petition to condone the delay of more than 2? years is filed under Section 5 of the Limitation Act, there would have been a chance to consider the same by the second respondent and since no petition invoking Section 5 of the Limitation Act was even filed by the petitioner, the second respondent had no occasion to go into that issue as to whether Section 5 of the Limitation Act can be invoked in view of the decision of this Court reported in 2002(3) L.L.N. 544 (cited supra). When that being the position, the second respondent had no option except to go in accordance with the Rules rejected the petition filed by the petitioner under Rule 5(7) of the Rules and by thus, the impugned order passed on 10.08.2005 is

fully justifiable and need not be interfered with.

15. Insofar as the said judgment of 2002(3) L.L.N. 544 (cited supra) is concerned, at Paragraph 8 of the judgment, the learned Judge has held that insofar as the special law do not expressly exclude the application of the Limitation Act, the application for delay of condonation can be entertained by the appropriate authority under the special law. If this ratio is applied to the present case, it can be easily concluded that if there is any petition to condone the delay under the Limitation Act filed, then there is no hesitation in holding that such petition should have been decided on its own merit and not by the reason that there is no power for the authority under the Rule to condone the delay. However, the facts are slightly different in this case as the petitioner has not even thought of filing a petition under Section 5 of the Limitation Act, in spite of the categorical ruling of this Court on this aspect as has been referred to above. In the absence of even a petition, under Section 5 of the Limitation Act, prudently, we cannot expect that the second respondent authority should have considered the claim of the petitioner for the cause of delay in filing the petition to set aside the order and assuming the same, the second respondent should have passed an order in favour of the petitioner. Such a stretch of extending the benefit of invoking Section 5 of the Limitation Act suo motu without even a petition would have a disastrous consequences, and if the same is accepted by this Court, it would open a flood gate as litigant would claim that even without even a petition under Section 5 of the Act that Section can be invoked suo motu by the authorities or Courts concerned and delay should be condoned.

16. In such view as the matter, this Court is of the considered view that even though the principles enunciated in the said judgment reported in 2002(3) L.L.N. 544 (cited supra) paves way for invoking section 5 of the Limitation Act in respect of petition/review or appeal under the Rule, in the absence of even a petition under Section 5 of the Limitation Act by the petitioner, it may not be possible for this Court to consider the plea raised by the petitioner and the submissions made on his behalf."

17. However, in the present case, admittedly, the petitioner had submitted an application to condone the delay of 265 days in filing the revision and the said factor is found place in the original files produced by the learned Government Advocate. When that being the position, the revisional authority i.e., the respondent herein ought to have considered the said application for condonation of delay by invoking Section 5 of the Limitation Act.

18. Moreover, when similar situation arises out of the Cooperative Societies Act, this Court by earlier order made in W.P.No.7279/2010 in the matter of Sethuramalingam v. the Deputy Registrar of Cooperative 12 Societies, Madurai, had held that application under Section 5 of the Limitation Act can be entertained while considering the revision filed under Section 153 of the Act.

19. Following the said decision, this Court by yet another order, in W.P.(MD)

No.452/2012 dated 26.03.2013 in the matter of M. Chelladurai v. the Joint Registrar of Cooperative Societies, Virudhunagar, has also held that the dismissal of the revision on the ground of limitation is unsustainable. The relevant portion of the order made in W.P. No.452/2012 is reproduced herein for better appreciation of the issue:

"3. The matter is squarely covered by a decision of this Court dated 08.06.2010, made in W.P.No.7279 of 2010 (Sethuramalingam v. The Deputy Registrar of Co-operative Societies, Madurai Circle, Madurai and another). Paragraph 2 of the said order is extracted hereunder:-

"2.Considering the fact that the order passed by the 2nd respondent which is challenged in the writ petition, a revisional remedy is provided under Section 153 of the Act which is equally efficacious remedy, I am not inclined to entertain the writ petition. Hence, the writ petition is dismissed and the petitioner if so advised can work out his remedy under the provision of the Tamil Nadu Co-operative Societies Act. It is submitted by the Writ petitioner that under Section 153 of the Tamil nadu Co-operative Societies Act the revision has to be filed within 90 days and in this case more than 90 days has passed. Even though under Section 153 of the Tamil Nadu Co-operative Societies Act the revision to be filed within 90 days, the Act does not exclude the application of Section 5 of the Limitation Act and if so advised the petitioner can also file under Section 5 of the Limitation Act to condone the delay in filing the revision along with the revision."

4. In these circumstances, the impugned order is set aside and the petitioner is permitted to re-submit the revision petition, within a period of two weeks from the date of receipt of a copy of this order, along with condone delay application to condone the delay in filing the revision petition to the first respondent and the first respondent is directed to entertain and dispose the same on merits and in accordance with law. The writ petition is disposed of in the above terms. No costs."

20. In view of the said decisions of this Court, where an uniform stand consistently have been taken, even in the absence of specific provisions for entertaining the application to condone the delay by invoking Section 5 of the limitation Act, the same can be entertained for the ends of justice.

21. Therefore, in this case also, even though there is a petition to condone the delay of 265 days in filing the revision, the same was not entertained and on the ground of limitation, the revision petition was dismissed by the respondent. Therefore, the order impugned is unsustainable, in view of the aforesaid settled legal position. Hence, this Court has no hesitation to quash the said order and accordingly, the impugned order is quashed and the writ petition is allowed.

22. The respondent is directed to take up the condone delay petition filed by the petitioner and after deciding the same, the revision petition of the petitioner can also be decided on merits and the needful shall be done by the respondent within a period of three months from the date of receipt of this order. No costs.