
(2009) 01 OHC CK 0031
In the Orissa High Court

Prafulla Kumar Mohanty

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 136
Limitation Act, 1963 — Section 14, 5

Citation : (2009) 107 CLT 772 : (2009) 1 OLR 642 Supp

Hon'ble Judges : I.M. Quddusi, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—After being unsuccessful before the Supreme Court in SLP No. 23158 of 2004, the Petitioner has once again approached this Court by filing a review petition under Order 47, Rule 1 read with Section 114 of the Code of Civil Procedure, inter alia, praying to review the Judgment dated 24th May, 2004 passed by the Division Bench of this Court in Letters Patent Appeal No. 41 of 2002. The said petition has been registered as RVWPET No. 71 of 2004. The present Misc. Case has been filed u/s 5 read with Section 14 of the Limitation Act praying to condone the delay in filing the review petition. According to the Stamp Reporter, there is a delay of 150 days. In the Misc. Case, it is averred that the Judgment dated 24.6.2004 passed in L.P.A. No. 41 of 2002 was challenged before the Supreme Court in SLP No. 23158 of 2004 and after dismissal of the Special Leave Petition, the review petition has been filed and as such, the delay should be condoned. According to the Petitioner, the delay in filing the review petition was neither deliberate nor intentional and had occasioned due to pendency of the SLP before the Supreme Court and as such, the period spent in pursuing the SLP should be excluded.

2. After receiving notice, Opposite Party-Insurance Company filed a Counter affidavit repudiating the averments made in the Misc. Case and taking a positive

stand that Section 14 of the Limitation Act will not be applicable to a case where the matter was prosecuted at Supreme Court in SLP and as such, the prayer for exclusion of time spent in prosecuting the case at Supreme Court is misconceived. It is also stated that the Judgment passed by the Division Bench of this Court in L.P.A No. 41 of 2002 has merged with the order passed by the Supreme Court in SLP No. 23158 of 2004 and as such, the Review Petition is not maintainable and should be dismissed in limine.

In course of hearing, Learned Counsel for the Petitioner relying upon the decision of the Supreme Court in the case of Kunhayammed and Others Vs. State of Kerala and Another, , submitted that as the SLP has been dismissed at the very threshold, the said dismissal shall not stand on the way of the Petitioner to file a petition for review of the order passed by this Court. In support of his submission he also relied upon the decision of Jamu & Kashmir High Court in the case of Mallik Dar v. Mst. Janti and Anr. AIR 1971 J&K 119.

3. Before proceeding to deal with the limitation petition, this Court feels it prudent to refer to the facts for better appreciation.

4. The Petitioner was working as a Senior Clerk in the District Judge's Court at Berhampur. While travelling in a car along with his family members on 28.4.1990 he met with an accident and sustained certain injuries including dislocation of hip joint and right tibia. He filed a claim petition bearing MAC No. 13 of 1991 before the 2nd M.A.C.T., Berhampur for compensation to the tune of Rs. 4,98,782.62. The Tribunal after vivid discussion of the evidence, both oral and documentary, awarded a compensation of Rs. 86,000 with interest " 9% per annum. Being aggrieved by the said award, he approached this Court in Misc. Appeal No. 430 of 1996. Learned Single Judge on being satisfied, enhanced the compensation to Rs. 2,31,000 with interest at the rate of 9% per annum from the date of claim. The said Judgment was assailed by the Insurance Company in L.P.A. No. 41 of 2002. The Division Bench of this Court after referring to the medical report and other evidences came to the conclusion that the claimant was able to walk and perform normal duties. He did not require assistance of any person while riding bicycle, while walking or climbing steps. After being discharged from the hospital, he continued to work as Bench Clerk in the Civil Court and then opted for voluntary retirement. Thereafter, he got himself enrolled as an Advocate and started practicing in different Courts. Considering the evidence of P.W.6 and other materials it was found that the claimant had not become totally invalid, on the other hand, he opted for voluntary retirement and went into active practice as an advocate, where work is more strenuous than that of a Bench Clerk. The Division Bench reduced the compensation to Rs. 1,65,000 with interest " 9% per annum from the date of filing of the claim petition. The said order was assailed by the Appellant before the Supreme Court in SLP No. 23158 of 2004. After hearing the Learned Counsel, the Supreme Court passed the following order on 22.11.2004 in the Special Leave Petition.

Upon hearing Counsel the Court made the following

ORDER

The SLP is dismissed.

5. Mr. Padhi, Learned Counsel appearing for the Opposite Parties-Insurance Company relying upon the order of the Supreme Court, submitted that it would be apparent that the Supreme Court after applying its mind, on being satisfied that there was no reason to interfere with the Judgment passed by the Division Bench, rightly dismissed the Special Leave Petition. Such dismissal, it is submitted, cannot be said to be a dismissal at the threshold. On the other hand, the Supreme Court after giving opportunity of hearing and being appraised of the fact and point of law canvassed and on being satisfied that there was no reason to interfere with the reasonings and conclusions arrived at by this Court, declined to interfere with the same.

6. Learned Counsel for the Petitioner, on the other hand, submitted that the Supreme Court having dismissed the SLP at the stage of admission, there was no bar for the Petitioner to file a review petition as doctrine of merger shall not apply.

7. In the case of Abbai Maligai Partnership Firm and Another Vs. K. Santhakumaran and Others, , the Supreme Court observed as follows:

The manner in which the Learned Single Judge of the High Court exercised the review jurisdiction after the special leave petitions against the self-same order had been dismissed by this Court after hearing Learned Counsel for the parties, to say the least, was not proper. Interference by the Learned Single Judge at that stage is subversive of judicial discipline. The High Court was aware that the SLPs against the Orders Dated 7.1.1987 had already been dismissed by this Court. The High Court, therefore, had no power or jurisdiction to review the self-same order, which was the subject-matter of challenge in the SLPs in this Court after the challenge had failed. By passing the impugned order on 7.4.1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this Court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case, was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court under the circumstances, was palpably erroneous. The Respondents who approached the High Court after the dismissal of their SLPs by this Court, abused the process of the Court and indulged in vexatious litigation. We strongly deprecate the matter (sic) in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this Court....

8. In the case of K. Rajamouli Vs. A.V.K.N. Swamy, , the Supreme Court held that dismissal of SLP against the impugned Judgment of the High Court would not constitute res judicata when a SLP is filed against the order passed in the review petition provided the review petition was filed prior to filing of SLP against the

main Judgment of the High Court. But then, the position would be different where after dismissal of the Special Leave Petition, the review is filed on the ground that the party was prosecuting remedy by way of Special Leave Petition. In such a situation, filing of review petition would be an abuse of the process of the law.

9. So far as application of Section 14 of the Limitation Act is concerned, it would be prudent to refer to the said Section, which reads as follows:

14. Exclusion of time of proceeding bona fide in Court without jurisdiction.-(1) In computing the period of limitation for any suit the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the Defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

10. It is apparent that the time spent that too with due diligence in prosecuting another civil proceeding, whether in a Court of first instance or of appeal or revision, shall only be excluded while calculating limitation. The Special Leave Petitions are filed under Article 136 of the Constitution and stands on a separate footing. It should not be treated to be an appeal as contemplated under Clause (a) of Order 47, Rule 1 of the Code of Civil Procedure. The SLP under Article 136 of the Constitution is an extraordinary remedy and not a remedy by way of preferring an appeal before the said Court. (See *Laxman Marotrao Navakhare Vs. Keshavrao Eknathsa Tapar*,). In the said decision it has been held that Article 136(1) of the Constitution confers on the Supreme Court overriding and exclusive power of granting special leave to appeal. It does not confer right to appeal. It only confers a right to apply for special leave to appeal, which is the discretion of the Court. A discretionary power under Article 136 cannot be construed so as to confer a right of appeal, or revision, which is non-existent.

11. The question of existence of sufficient cause in each case depends upon the circumstance of the said case. "Sufficient cause" within the meaning of the Section must be caused beyond the control of the party invoking the aid of the Section, and the test to be applied would be to see as to whether it was bona fide cause, inasmuch as nothing can be considered to be bona fide, which is not done with due care and attention. In the case in hand, the Petitioner without filing a petition for review before this Court, approached the Supreme Court and after becoming unsuccessful there, he once again approached this Court, that too

after the period of limitation and as such, the Petitioner has neither acted bona fide nor with due diligence. Thus, the case is squarely covered by the ratio of the Judgment of the Supreme Court in the case of K. Rajamouli v. A.V.K.N. Swamy (supra). The facts of the case of Mallik Dar (supra) of Jammu Kashmir High Court are quite different.

12. After hearing Learned Counsel for the parties patiently, perusing the materials meticulously and considering the matter diligently, for the reasons stated above, we are not satisfied with the contentions advanced by the Learned Counsel for the Petitioner. According to us, there is no sufficient ground to condone the delay in filing the review petition. We, therefore, decline to condone the delay. The Misc. Case is, accordingly, dismissed.

I.M. Quddusi, J.

I agree.