

(1997) 09 OHC CK 0015

In the Orissa High Court

Case No : Civil Revision No. 171 of 1997

Prakash Chandra Das and Others

APPELLANT

Vs

Labour Commissioner and Another

RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1997) 84 CLT 713 : (1997) 2 OLR 478

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : J.K. Tripathy, B.P. Tripathy, S.N. Mishra, P.K. Chand and D. Satpathy, for the Appellant; Satyabadi Das, R.N. Acharya, P.C. Das and S.B. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Opposite party No. 2 claiming to be the Secretary of the IPISTEEL Employees Union filed T.S. No. 303 of 1996 for declaration that he and others were validly elected as the office bearers of the Union and defendants 1 to 5 (present petitioners) were not elected as office bearers of the trade union and for injunction restraining the said defendants from interfering with the functioning of the trade union. An application for injunction was filed in the said suit praying for restraining defendants 1 to 5 from interfering with the functioning of the trade union. The trial Court by order dated 20.1.1997 while refusing to grant injunction as prayed for, passed an order appointing the Labour Commissioner as the custodian of the trade union till the next election of the office bearers is held and directed the Labour Commissioner to take steps for holding such election of the trade union. Miscellaneous Appeal No. 15 of 1997 was filed by the present petitioners against the aforesaid order of the trial Court challenging the direction of the trial Court for holding the election. Since the application was admittedly filed beyond the period of limitation, an application u/s 5 of the Limitation Act for condonation of delay was filed along with the appeal. But order dated 20.6.1997

the appellate Court condoned the delay ex parte and passed order of stay of the order of the trial Court. The present opposite party No. 2, had moved the appellate Court for vacating the order of stay but as the case was being adjourned, he filed Civil Revision No. 145 of 1997 in the High Court. This Court at the stage of admission without issuing notice to the other parties disposed of the Civil Revision, directing the appellate Court to reconsider the question of condonation of delay in presence of the parties. Thereafter, the matter was heard before the appellate Court in presence of the parties and by order dated 25.7.1997 the appellate Court dismissed Misc.Case No. 15 of 1997 on the ground of limitation. The present Civil Revision has been filed, by the defendants-appellants against the aforesaid order of the District Judge.

2. In the present Civil Revision, the learned counsel appearing for the petitioners relying upon the decisions of the Supreme Court reported in State of Haryana Vs. Chandra Mani and others, as followed in Urban Improvement Trust Vs. Poonam Chand, has contended that in the interest of justice, the appellate Court should have condoned the delay and disposed of the appeal on merit.

The learned counsel appearing for the plaintiff-opposite party No. 2 has supported the decision of the lower appellate Court.

3. From the discussions of the various earlier decisions of the Supreme Court and Privy Council as noticed by the Supreme Court in the aforesaid decisions, the following well settled principles may be culled out.

(i) It is not necessary that the applicant has to explain whole of the period between the date of the judgment till the date of filing the appeal. It is sufficient that the applicant would explain the delay caused by the period between the last of the dates of limitation and the date on which the appeal is actually filed.

(ii) what constitute sufficient cause cannot be laid down by hard and fast rules and would depend upon the fact and circumstance of each case.

(iii) The expression "sufficient cause" should receive a liberal construction so as to advance the cause of substantial justice. If the refusal to condone the delay results in grave miscarriage of justice, it would be ground to condone the delay.

(iv) A party should not be deprived of the protection of Section 5 unless there is want of bona fides.

(v) There is no presumption that delay is occasioned deliberately or on account of culpable negligence or mala fides.

4. It has to be seen against the aforesaid well settled principles relating to condonation of delay, whether the present petitioners had shown sufficient cause and whether the appellate Court acted with material irregularity in refusing to condone the delay.

5. In the memorandum of appeal before the lower appellate Court, the present petitioners claimed that notice for convening a general body meeting of the union

for Annual election of 1997-98 was circulated and the General Body Meeting was held on 19.1.1997 when the office bearers were elected for the union and the appellants along with other members had been elected as office bearers for the year 1987-88. It was further claimed that since the newly elected office bearers for 1997-98 had functioned for the union, the outgoing office bearers who were defendants in T.S. No. 106 of 1996 did not proceed with that litigation. In the limitation petition it has been indicated that the petitioners thought of filing the appeal when the Labour Commissioner served the notice for holding election in accordance with the direction of the trial Court. The learned counsel appearing for opposite party No. 2 has vehemently challenged the assertion of the petitioners that, in fact, election had been held on 19.1.1997. He also emphasised upon the observation of the appellate Court to the effect that the letter allegedly written by plaintiff did not categorically indicate as to whether there had been election for the year 1997-98.

6. Though the application for condonation of delay has not been happily worded from the submission of the learned counsel for the petitioner in this Court, it is apparent that the petitioners claimed that they did not file appeal earlier because they thought it would not be necessary for them to file appeal and only after receiving notice from the Labour Commissioner, they thought it prudent to file the appeal.

Whatever may be said about the wisdom of the petitioners in not promptly challenging the order dated 20.1.1997, the question is whether there was lack of bona fides on their part in not preferring the appeal in time. The question whether in fact an election had been held on 19.1.1997 or not and the affect of letter allegedly written by opposite party No. 2 are factual questions which can be only determined in the suit itself, if raised at the appropriate state. Since the matter was hotly continued before the trial Court and subsequent stages in appeal and revision, it cannot be said that the petitioners deliberately or negligently refrained from filing the appeal as they were not to derive any particular advantage by not preferring the appeal in time. As already indicated though their wisdom in not filing the appeal immediately can be questioned, but not their bona fides. Apart from the above aspect, it is not disputed that Miscellaneous Appeal No. 8 of 1997 has been filed by the Labour Commissioner against the order dated 20.1.1997. Since the legality of the order dated 10.1.1997. Since the legality of the order dated 10.1.1997 was under challenge in another appeal, it would have been better on the part of the appellate Court to condone the delay in the present case, so that the present appeal could also have been decided on merit along with Misc. Case No. 8 of 1997. As indicated in the Supreme Court decision the expression "sufficient cause" has to be liberally interpreted so as to advance the cause of substantial justice. It is no doubt true that if a valuable right is accrued to a party, the same should not be taken away merely for the asking. Since the legality of the order dated 20.1.1997 was in question in another appeal, the hearing of the present appeal on merit would not have prejudiced the plaintiff-opposite party in any manner. As the lower appellate

Court has not examined the matter in its proper perspective by keeping in view the liberal interpretation which is being given in the various Supreme Court decisions, I consider it a fit case where the impugned order should be set aside and the delay in filing M.A. No. 15 of 1997 should be condoned and the appellate Court should dispose of the appeal on merit.

7. Since both M.A. No. 15 of 1997 and M.A. No. 8 of 1997 are directed against the same order, both the appeals should be heard and disposed of together. From lower Court records of the connected appeal, it appears that the case had been adjourned beyond Puja Vacation. However, keeping in view the urgency of the matter, it is desirable that the appeals should be disposed of as expeditiously as possible by preponing the date of hearing. Accordingly, all the parties including the appellant in M.A. No. 8 of 1997 are directed to appear before the appellate Court on 22nd September, 1997 and the appellate Court should do well to hear the matter on the said date or any other suitable date and finally dispose of the appeals as expeditiously as possible preferably before the ensuing Puja Vacation. It is needless to point out that the appellate Court shall dispose of the appeals on merit without being influenced in any manner by any of the observations made in this Civil Revision. Similarly, the trial Court while disposing of the suit on merit is required to decide the case on the basis of evidence on record without being influenced in any manner by any of the observations made in this order.

8. The Civil Revision is accordingly allowed. There will be no order as to costs. With the disposal of the Civil Revision all interim orders stand dissolved. It would be open to the parties to move the appellate Court for any interim order, and if any such applications are filed the said applications should be disposed of by the appellate Court in accordance with law without being influenced by any of the observations made in the present order. The lower Court records be sent back immediately through a Special Messenger.