

(1984) 07 MAD CK 0058
In the Madras High Court

Presentation Convent

APPELLANT

Vs

Corporation of Madras

RESPONDENT

Date of Decision : 13-07-1984

Acts Referred:

Citation : (1985) 98 LW 465 : (1985) 2 MLJ 162

Hon'ble Judges : M.N. Chandurkar, C.J

Bench : Division Bench

Judgement

M.N. Chandurkar, C.J.—The question which arises in these civil revision petitions is whether the Small Causes Court, Madras, can in an appeal against the decision of the taxation Appeals Committee, condone the delay in issuing a notice of intention to appeal which is required to be issued to the Commissioner within ten days from the date on which such decision was communicated by registered post under Rule 15(a)(i) of Schedule IV of the Madras City Municipal (Corporation) Act, 1919 (hereinafter referred to as the Rules).

2. The petitioner is a Convent whose property was assessed to municipal tax. The Convent filed the appeals against the order of assessment to the Taxation Appeals Committee under Rule 4 of the Rules. The Taxation Appeals Committee decided the appeal by an order which was received by the Convent on 21.10.1982, It is stated in the affidavits for condonation of delay filed before the Chief Judge, Court of Small Causes, Madras, that the Mother Superior had to leave Madras suddenly as she fell ill " and therefore the notice of intention to file an appeal was given only on 18.12.1982, that is, on the next day after the arrival of the Mother Superior at Madras. The delay is thus stated to have been occasioned by reason of illness. Thereafter, there was a further delay of fortyfive days in filing the appeal before the Small Causes Court.

3. The learned Chief Judge, Court of Small Causes, took the view that the appeal could not be heard unless a notice of intention to file the appeal was given within the prescribed period of ten days. The learned Judge also referred to the provision in Rule 15(b) which provides that the Court may for sufficient cause

excuse the delay in the presentation of an appeal. The learned Judge therefore held that when there is an express provision with regard to excusing the delay in the presentation of an appeal and there was no . provision for expusing the delay in respect of any other matter, the Court could not condone the delay in sending the notice of intention to appeal. The applications for condonation of delay having been dismissed, these civil revision petitions have been filed on behalf of the Convent.

4. It is contended on behalf of the petitioner, on the authority of a decision of the Allhabad High court in Babu Ram Vs. Arjun Lal and Others, that in the interest of justice, the court had ample power to condone the delay and that there were several instances in which the Small Causes Court had condoned the delay in the deposit of tax which is required to be made under Rule 15(a)(ii) of the Rules. It is also stated that the Small Causes Court has been condoning the delay even in sending the notice of intention to appeal.

5. Now, the question whether the Small Causes Court had been excusing delays in similar matters or not is not very relevant because the question as to whether the delay in such a case can be condoned or not has to be decided on the terms of Rule 15. Rule 15 of the Rules reads as follows:

Rule 15(a): An appeal shall lie to. the Small Causes Court against any decision of the Taxation Appeals Committee constituted under Rule 14: but no such appeal shall be heard by the said Court, unless

(i) a notice of intention to appeal has been given to the Commissioner within ten days from the date on which such decision was communicated by registered post, and

(ii) the petition of appeal has been presented within fourteen days from the date on which such decision was communicated by registered post and the tax has been paid within the said period.

....

(b) The Court may for sufficient cause excuse delay in the presentation of an appeal.

(c) The notice of intention to appeal shall state the name, occupation and residence of the appellant or of his attorney or vakil (if any) and the grounds of appeal.

(d) The appellant shall not, except with the leave Of the Court, urge or be heard in support of any ground of objection which has, not been set forth in his notice of intention to appeal.

(e) The provisions of Parts II and III of the Indian Limitation Act, 1908, relating, to appeals shall apply to every appeal preferred under this rule.

6. A careful reading of Rule 15 shows that it puts a fetter on the power of the

court to which an appeal lies under that Rule in the matter of hearing of the appeal. It lays down certain conditions, the satisfaction of which is necessary before the court can proceed to hear the appeal. The words used in Rule 15(a) are "no such appeal shall be heard by the said court, unless" On the very terms of Rule 15(a) it is clear that it is of a mandatory character and one, of the conditions which is required to, be satisfied before the court can hear the appeal is not only that a notice of intention to appeal should be sent, but that it should be sent within the period of limitation for filing the appeal from the date in which the decision of the Taxation Appeals Committee has been communicated. It is obvious that the clear purpose of making this provision was to have an expeditious disposal of the appeal. As a matter of fact, the notice of intention to appeal is something similar to a notice u/s 80 of the Code of Civil Procedure, because in Clause (e) of Rule 15, the prescription is that a notice of intention to appeal shall state the name, occupation and residence of the appellant or of his attorney or vakil and the grounds of appeal. There is a further restriction on the scope of the appeal itself. Except with the leave of the Court, the scope of the appeal is limited by the grounds of appeal communicated in the notice of intention to appeal within the prescribed time. I fail to see how in the face of the mandatory words used in Rule 15(a), the period of ten days can be extended by the court. It is a period specified by the statute.

7. It is also significant to note that Clauses (b) and (d) of Rule 15 make specific provision with regard to certain matters of limitation. There is express power given in Clause (b) to condone the delay in the presentation of an appeal, which means that a delay beyond the period prescribed in Rule 15(a)(ii) can be condoned. Clause (e) makes applicable to the appeals under Rule 15, the provisions of Parts II and III of the Indian Limitation Act, 1908, that is, Sections 3 to 24. Rule 15, therefore, in a self-contained code dealing with limitation and the power of the court to condone delay in specified causes. By no stretch of imagination a delay in issuing the notice of intention to appeal required to be given under Rule 15(a)(i) can be treated on the same basis as the delay in the presentation of an appeal. Therefore, the scheme of Rule 15 is, firstly there is no express power of overlooking the delay in sending the notice of intention to appeal; secondly, there is an express provision with regard to limitation in the matter of presentation of appeal and thirdly, the most important of all, there is an express fetter on the power of the court to decide appeals which did not comply with the procedural formalities prescribed in Rule 15(a)(i) of the Rules. It is therefore very difficult to accept the argument that the court should exercise a power similar to what is exercised while dealing with a matter covered by Section 5 of the Limitation Act.

8. Apart from the fact that on the terms of Rule 15(a)(i) no other conclusion seems to be possible, a reference may be made to a Division Bench Judgment of this Court in *Ahmed Ali and Co. Vs. The Commissioner, Corporation of Madras*, which has been brought to my notice by the learned Counsel appearing for the Corporation. The question in that case was whether the Small Causes Court can

entertain as appeal wherein the requirement contained in Clause (ii) of Rule 15(a) is not satisfied. The Division Bench held that the language of Rule 15 in Schedule IV of the Madras City Municipal (Corporation) Act is imperative and the Court of Small Causes would have no jurisdiction to entertain an appeal unless the requirement contained in Clause (ii) of Rule 15(a) is satisfied, namely, payment of tax due under the order appealed against. The same ratio, in my view, would also govern the requirement of Rule 15(a)(i) of the Rules.

9. The decision of the Allhabad High Court relied on by the learned Counsel for the petitioner is, in my view, wholly inapplicable to the facts of the present case. In that case, the learned single Judge has observed that in proceedings under the U.P. Consolidation of Holdings Act although the CPC in its strict sense is not applicable, the analogy laid down in Order 41, Rule 20 would be applicable in view of settled principles of natural Justice. In the present case, there is no question of violation of any principle of natural justice. An appeal is a statutory right and it must be exercised strictly in accordance with the conditions laid down by the statute which prescribed the right of appeal. If a right of appeal has to be exercised, it must be exercised in accordance with the provisions of Rule 15 and if Rule 15 lays down certain pre-conditions which should be fulfilled by the appellant, in the absence of any express power in that Rule to dispense with these conditions, the court cannot overlook the fact that those conditions have not been fulfilled.

10. The argument that this is not a case in which no notice of intention to appeal has been issued at all and that this is a case where the notice of intention to appeal has been issued belatedly is not of much substance because if within the period prescribed by the statute for satisfaction of the condition, the condition is not satisfied, the fact that the condition has been satisfied belatedly does not cure the non-compliance with the provisions of the statute. In my view, there is no substance in these petitions. The civil revision petitions fail and they are dismissed. There will be no order as to costs.