
(2015) 05 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Application No. 8059 of 2015

Punamchand Devchand

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-05-2015

Acts Referred:

Advocates Act, 1961 — Section 48AA
Gujarat General Clauses Act, 1904 — Section 11
Gujarat Stamp Act, 1958 — Section 15, 53, 53(1)

Citation : (2015) 3 GLR 1920

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Dhaval D. Vyas, for the Appellant; Shruti Pathak, A.G.P., Advocates for the Respondent

Final Decision : Disposed off

Judgement

K.M. Thaker, J—Heard Mr. Vyas, learned Advocate for the petitioner and Ms. Pathak, learned A.G.P. for the respondent-State authority who has appeared on advance service of copy of the petition. Having regard to the facts and circumstances of the case and considering the submissions made by learned Advocates for the contesting parties, below-mentioned order is passed:

"Notice returnable forthwith.

Ms. Pathak, learned A.G.P. has waived service of Notice on behalf of the respondent authority. At the request of learned Advocate for the petitioner and with consent of learned A.G.P. the matter is taken up for hearing and appropriate order today."

2. In present petition, the petitioner has prayed, inter alia, that:

"10(A) The Hon"ble Court may be pleased to issue writ of mandamus and/or a writ of certiorari and/or any other appropriate writ, direction and order to quash and set aside communication dated 10-3-2015 of Chief Controlling Revenue

Officer, State of Gujarat, Gandhinagar and further be pleased to direct the learned authority to register the Appeal preferred by the petitioner challenging the order dated 13-10-2014 of the Deputy Collector and decide it on its merits."

3. The petitioner is aggrieved by order dated 10-3-2015 passed by Chief Controlling Revenue Officer, Gandhinagar, under Sec.53(1) of Gujarat Stamp Act, 1958 whereby the petitioner's revision application against order of first adjudicating authority is rejected on the solitary ground that the petitioner filed the application after expiry of prescribed period of limitation.

3.1. On perusal of the order, it emerges that any other reason is not cited by the authority in the order dismissing the application.

4. In this background, learned Advocate for the petitioner submitted that aggrieved by the order dated 13-10-2014 passed by the Deputy Collector (i.e. first adjudicating authority) the petitioner filed revision application.

4.1. Learned Advocate for the petitioner submitted that the application was filed on 15-1-2015 (against the order dated 13-10-2014).

4.2. Learned Advocate for the petitioner submitted that in light of these facts appellate authority dismissed the application on the ground that it was filed one day after the prescribed period of limitation expired and that therefore the application suffers from vice of delay (of one day).

4.3. According to the learned Advocate for the petitioner the authority has not taken into consideration the fact that the last day of prescribed period of limitation i.e. 90th day, was public holiday, (it being 14th January/ Makarsankranti).

4.4. Learned Advocate for the petitioner submitted that the authority has also not taken into account the date of receipt of the order.

5. Learned A.G.P. has opposed the petition. She submitted that it is true that the application is rejected on the solitary ground that it is filed after prescribed period of limitation expired and not on any other ground however the order does not suffer from any error inasmuch as the petitioner filed the application on 15-1-2015 against order dated 13-10-2014, and that therefore, the revision application was filed one day after the period of limitation expired.

6. I have heard learned Advocate for the petitioner and learned A.G.P. and considered the material on record.

6.1. According to the case of the petitioner, somewhere in April 2006 the petitioner purchased certain property and executed a sale-deed.

6.2. The said sale-deed was presented for registration and it came to be registered on 25-4-2006 with the office of Registrar at Surat.

6.3. Subsequently, the petitioner was served with a notice dated 30-10-2008 calling upon the petitioner to pay deficit stamp duty (to the tune of Rs.

6,59,850/-) on the ground that the petitioner had not paid adequate stamp duty while presenting the sale-deed for registration.

6.4. The authority assessed the market value of the property at Rs. 1,23,00,000/- and demanded deficit stamp duty.

6.5. After adjudication, the first adjudicating authority i.e. Deputy Collector passed order dated 13-10-2014 whereby the demand came to be confirmed and the petitioner was directed to pay a sum of Rs. 6,60,100/-including penalty of Rs. 250/-.

6.6. Against the said order dated 13-10-2014 the petitioner filed revision application on 15-1-2015.

6.7. The said application came to be rejected by impugned order dated 10-3-2015 on the ground that the petitioner filed the revision application one day after the prescribed period of limitation expired.

6.8. So as to appreciate the grievance raised by against impugned order dated 10-3-2015, it is necessary to take into account certain relevant dates viz.

"(a) 13-10-2014 - first adjudicating authority passed the order against the petitioner and confirmed the demand.

(b) 17-10-2014 - the said order dated 13-10-2014 was dispatched from the office of the first adjudicating authority, to the petitioner.

(c) 15-1-2015 - the petitioner filed the revision application in the office of the concerned and competent authority."

6.9. In this background the appellate authority has treated the revision application as an application which is filed after expiry of prescribed period of limitation.

6.10. It is pertinent that under the order dated 10-3-2015, the appellate authority itself has recorded that the order passed by the first adjudicating authority was dispatched (from the office of first adjudicating authority) to the petitioner on 17-10-2014.

6.11. Thus, though actually the date of communication of the order i.e. knowledge about the order and the decision would be relevant date, even if the date of order of dispatch (instead of considering the date of actual communication i.e. the date of receipt of the order by the petitioner) is taken into account then also the appellate authority is not right and/or justified in rejecting the revision application on the ground that it was filed on 91st day i.e. after delay of one day because for the purpose of calculation of limitation, the starting point would be the date of knowledge about the order to the concerned person.

6.12. When the said aspect is taken into consideration then it becomes clear that the decision of the authority is not just and correct and that submission of the

revision application was within prescribed period of limitation i.e. 90 days and the application could not have been treated as filed after expiry of prescribed period of limitation.

7. The authority seems to have proceeded on erroneous premise and/or on misconstruction of the provision under Sec. 53 of the Act. The expression....from the date of the order...does not warrant literal construction inasmuch as when the order is not passed in presence of and to the knowledge of the noticee and the authority passes the order some time after the conclusion of hearing, the noticee would not have any knowledge about the authority's decision/conclusion and the order and the reasons for the decision. Therefore, the aggrieved person would not be able to or equipped to take proper and educated decision i.e. whether to accept the order or to challenge and to avail the statutory remedy (of appeal/revision application). Thus, what would be relevant is knowledge about the decision/order and mere rendition of the order (dictation of and signature below the order) in the chamber of the authority is not enough. The noticee i.e. the party adversely affected by the order should be aware about the decision of the authority and also about the order/direction as well as the reasons assigned by the authority to support and justify his decision. In absence of knowledge about the exact decision of the authority and the reasons recorded by the authority in the order, the concerned party i.e. noticee would be clueless and cannot take any steps with reference to the order, unless and until he is served with copy of the order. Under the circumstances, the remedy provided by the Legislature against order of the first adjudicating authority would remain ineffective and ornamental for the noticee. Therefore, said Sec. 53 and particularly the expression from the date of the order should be read along with and in light of Rule 7 of the Rules found under the Act. The said Rule 7 prescribes the procedure for service of the order. The said Rule, thus, clarifies the object of the Sec. 53 and intention of the Legislature to provide statutory remedy and forum to challenge the order passed by the first adjudicating authority. Having regard to this aspect, the expression from the date of the order...cannot be divorced and separated from Sec. 53 and cannot be read in isolation but should be interpreted to give effect to the sale and object of the provision viz. to provide remedy to challenge the order and so as to make the remedy effective and meaningful. Therefore, the said expression must be construed to mean from the date of knowledge about the order otherwise the remedy would be rendered ineffective, otiose and worthless. If the interpretation of the provision by the authority is accepted, then it would provide avenue to the authority to play mischief and deprive, artificially and in unjust manner, the aggrieved person an opportunity to challenge the order before the statutory appellate/revisional authority inasmuch as the adjudicating authority may sign the order and then the order may be dispatched after some time, and thereby, artificially curtail the period allowed by the statute for filing appeal/revision application. In view of the fact that the statutory authority under the Act does not have power to condone delay, such situation would be fatal for the aggrieved person.

8. In this context it would be appropriate at this stage to take into account observations by Hon''ble Apex Court in the case between D. Saibaba Vs. Bar Council of India and Another, AIR 2003 SC 2502 : (2003) 96 CLT 473 : (2003) 3 CompLJ 123 : (2003) 2 CTC 497 : (2003) 4 JT 435 : (2003) 4 SCALE 546 : (2003) 6 SCC 186 : (2003) 3 SCR 1209 : (2003) 2 UJ 1178 : (2003) AIRSCW 2582 : (2003) 4 Supreme 154 wherein Hon''ble Apex Court, while considering provision under Sec. 48AA of Advocates Act observed, inter alia, that:

"9. So far as the commencement of period of limitation for filing the review petition is concerned, we are clearly of the opinion that the expression the date of that order as occurring in Sec. 48AA has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart."

8.1. Consequently, in the cases where the order is passed sometime after the hearing gets concluded and it is not passed or not pronounced in presence of the concerned party or his representative, the concerned party may not be able to file application within 90 days from the date of order as the concerned party will come to know that any order is passed only when the concerned party is informed the decision of the first adjudicating authority or when copy of the order is served to him.

9. A profitable reference also may be made to the decision by Hon''ble Apex Court in case of Housing Board, Haryana Vs. Housing Board Colony Welfare Association and others, AIR 1996 SC 92 : AIR 1995 SC 92 : (1996) 87 CompCas 898 : (1995) 6 JT 293 : (1995) 5 SCALE 89 : (1995) 5 SCC 672 : (1995) 3 SCR 219 Supp wherein Hon''ble Apex Court observed, inter alia, that:

"8. Before considering the merits of the submissions made by the learned Counsel for the appellant, it would be appropriate first to look into the relevant provisions relating to the limitation. Section 15 of the Act makes a provision for appeal and prescribes the limitation for the same. It reads as under:

"15. Appeal:-- Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of an order, in such form and manner as may be prescribed.

Provided further that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there were sufficient cause for not finding it within that period."

11. From the scheme of the Act, it becomes apparent that the Consumer Protection Act, 1986 has, been enacted with object to provide for better protection of the interest of the consumers, as a measure for economical and speedy remedy for the settlement of their disputes and matters connected therewith. It is with this object in view that Rule 4(10) has also been made. It provides for communication of the order of the District Forum to the parties free of charge in order to avoid the delay as well as to save the parties from the burden of expenses that may be incurred for obtaining the certified copy. If the rule itself enjoins a duty for communicating the order of the District Forum duly signed and dated to the parties free of charge, there will hardly be an occasion for the parties to make an application for obtaining a certified copy thereof. Thus, Sec. 15 of the Act cannot be read in isolation but it has to be read along with Rules 4(10) and 8(3) of the Rules and a combined reading of Sec. 15 and the Rules reproduced above gives an impression that the purpose, object and intention of these statutory provisions is to protect the interest of the parties before the District Forum by making it obligatory on the District Forum to provide a copy of the order duly signed and dated by the members of the Bench and the period of limitation prescribed with regard to the filing of an appeal shall be computed as commencing from the date of communication of the order in the manner laid down in sub-rule (10) of Rule 4.

12. In the facts and circumstances stated above, the date of pronouncement of the order in the open Court by itself cannot be the starting point for determining the period of limitation under Sec. 15 of the Act. It has also to be shown that the order of the District Forum so pronounced was duly signed and dated by the members of the District Forum so pronounced was duly signed and dated by the members of the District Forum constituting the Bench and the same was communicated to the parties free of charge. That being so, it has to be appreciated that there pronouncement of an order in the open Court will not be enough but under the scheme of the Rules a copy of the said order has also to be communicated to the parties affected by the said order so that the party adversely affected therefrom may have a fair and reasonable opportunity of knowing the text, reasons and contents thereof so as to formulate grounds of attack before the appellate or higher forums. In the absence of such communication of signed and dated order, the party adversely affected by it will have no means of knowing the contents of the order so as to challenge the same and get it set aside by the appellate authority or the higher Forums."

10. In the decision in case of State of Punjab Vs. Amar Singh Harika, AIR 1966 SC 1313 : (1966) 2 LLJ 188 wherein the subject-matter for consideration by Hon"ble Apex Court was with reference to order of dismissal passed by the competent authority against the respondent. In the said case and in that context, Apex Court has observed, inter alia, that:

"11. The first question which has been raised before us by Mr. Bishan Narain is that though the respondent came to know about the order of his dismissal for the

first time on the 28th May, 1951, the said order must be deemed to have taken effect as from the 3rd June, 1949 when it was actually passed. The High Court has rejected this contention; but Mr. Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr. Bishan Narains" argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it, will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June, 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May, 1951."

11. What emerges, on conjoint reading of the observations by Hon"ble Apex Court, is that for an order to become effective and operational, the order and

decision should be informed to the concerned person i.e. the person against whom the order is passed and he should be aware about the decision of the authority and also about the direction. As observed by Hon''ble Apex Court an authority may pass and sign an order and such order may be retained on file without communicating and forwarding it to the concerned person. The knowledge that an order is passed as well as knowledge about the actual decision and effect of the decision are imperative for enforcing the limitation prescribed (for filing application under Sec. 53 of the Act) by the Act.

11.1. In this view of the matter, the decision of the authority competent to decide the revision application is not sustainable and deserves to be set aside and is accordingly set aside.

11.2. There is yet another reason which establishes that the order of appellate authority is without application of mind.

11.3. It is not in dispute that the petitioner filed Appeal on 15-1-2015. It is also not in dispute that the preceding date was public holiday being Makarsankranti (i.e. 14-1-2015).

11.4. In that view of the matter, having regard to the provisions under Sec. 11 of the Gujarat General Clauses Act, the next date would be the relevant date and on that premise the submission of the application should have been considered as within prescribed period of limitation. The said Sec. 11 of the Gujarat General Clauses Act reads thus:

"11. Computation of time:-- Where, by any Bombay Act (or Gujarat Act) made after the commencement of this Act, any act or proceeding is directed to allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this Section shall apply to any Act or proceeding to which the Limitation Act, 1877 applies."

12. In light of the proviso to Sec. 11, it is relevant to mention that in the decision in case of J.N. Doshi v. State of Gujarat (Spl. C.A. No. 12147 of 2013), Hon''ble Full Bench has clarified that the provisions under Limitation Act do not apply to the proceedings under the Gujarat Stamp Act.

12.1. It is pertinent to note that even according to the appellate authority, the Appeal was filed after delay of only one day. Thus, 90th day being public holiday, Sec. 11 of the Gujarat General Clauses Act will be attracted and will be applicable in this case, and consequently the relevant date to be treated as "last day" for filing the application would be the following day i.e. the date next to the public holiday.

12.2. Thus, when the public holiday is not taken into consideration in light of aforesaid provision, then even according to the date taken into account by the authority, as the date of submission of the revision application, the application in question could not have been treated as time-barred (in view of the provisions under Sec. 11 of the Gujarat General Clauses Act).

12.3. The impugned order suffers from infirmity of non-application of mind on both counts and consequently the impugned order deserves to be set aside.

13. Therefore, impugned order dated 10-3-2015 passed by Chief Controlling Revenue Officer, Gandhinagar, under Sec. 53(1) of Gujarat Stamp Act, 1956 is hereby set aside and the matter is remitted to the revisional authority who shall decide the same afresh after hearing the petitioner. It is clarified that in view of the fact that the order impugned in present petition is passed only on one ground viz. that the application is filed after expiry of period of limitation, any other defect in the application, if at all there is any, or any other reason for not entertaining the application is not taken into consideration because the Court, has examined the order only in light of the reason and ground which are mentioned in the impugned order.

With the aforesaid clarifications the petition is decided accordingly and it stands disposed of. Direct service is permitted.