
(2000) 08 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1126 of 1999

Punjab State Electricity Board, Patiala	APPELLANT
Vs	
M/s Bathinda Chemicals Limited	RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Arbitration Act, 1940 — Section 14, 17
Limitation Act, 1963 — Section 5

Citation : (2001) 1 RCR(Civil) 252

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Mr. Sanjiv Sharma, for the Appellant; Mr. Rakesh Gupta, for the Respondent

Judgement

Swatanter Kumar, J.—This revision is directed against the order dated 17.8.1998 passed by the learned Additional District Judge, Bathinda declining to condone 28 days" delay in filing the first appeal against the judgment and decree dated 15.6.1996 passed by the Learned Additional Civil Judge (Senior Division), Bathinda.

2. Learned counsel appearing for the petitioners, while impugning the order under revision, contended that:

a) there was sufficient cause shown for condonation of delay of 28 days in filing the appeal. As such learned court has erred in law in refusing to condone the delay. In this regard, learned counsel relies upon the judgments of Hon''ble Supreme Court of India in the cases of State of Haryana Vs. Chandra Mani and others, and State of Madhya Pradesh Vs. S.S. Akolkar, ;

(b) the Electricity Board had reasonably good case on merits and question of principle of law was involved in the appeal which would effect number of other cases of the Board. This consideration should have weighed with the learned court below; and

(c) While relying upon the judgment of the Hon'ble Supreme Court in the case of Secretary to Government of Karnataka and another Vs. V. Harishbabu, , the learned counsel for the petitioners further contended that it is mandatory for the court to issue notice to the parties under the provisions of Section 14(2) of the Arbitration Act and non-compliance thereof vitiated the order of the learned trial court.

3. The facts giving rise to this revision fall within the very narrow compass. M/s Bathinda Chemicals Limited filed petition under Sections 14 and 17 of the Indian Arbitration Act for getting the award made rule of the court. Initially the award was set aside and was re-ferred to the Arbitrator for decision in accordance with law vide order dated 4.12.1987. The learned Arbitrator pronounced his award on 17.3.1990. The original award was got filed in the court for making rule of the court. The Arbitrator rejected the claim of the Board to the extent of Rs. 80,220.25, which was awarded as load surcharge for unauthorised load. The contention of the Board was that such charges were leviable as per condition No. 10(b) relating to levy of such charges on account of unauthorised load, as surcharge. The reason given by the Arbitrator for rejecting the claim was that there was no provision in the abridged condition of supply in that behalf. Objections were filed to the award by the Electricity Board. However, vide judgment and decree dated 15.6.1996, learned trial court made the award as rule of the court and directed payment to the applicant. Aggrieved therefrom, an appeal was filed before the learned first appellate court, which, as already noticed, was rejected being barred by time, resulting in filing the present petition.

4. At this stage, this court is neither concerned with the merits of the contention nor with the validity of the levied surcharge. The only question which squarely falls for consideration of this court in the present petition is whether the delay of 28 days in filing the appeal should or should not have been condoned by this court. It is apparent that the learned first appellate court has not touched the merits of the case and rightly so.

5. It is apparent that appeal against the judgment and decree dated 15.6.1996 was filed on 4.9.1996, thus was barred by 28 days. The petitioners herein had given, reasons which caused 28 days in filing the appeal before the learned first appellate court that AW-1, who appeared in the witness box on behalf of the petitioners, stated that they had obtained certified copy, thereafter the matter was taken up on administrative side for sanction of the competent authority to file an appeal. The sanction itself was received after following due procedures of the office on 2.9.1996 and there after the appeal was filed. It has also come in evidence that the department had obtained opinion of the counsel whether it was a fit case for preferring an appeal or not. This opinion itself was given on 23.7.1996. On the other hand, non-applicants had examined Sunil Kumar, RW-1, who merely denied the averments made by the applicant.

6. Endorsement in regard to the sanction was exhibited on record as Ex.A-2. Such sanction was obviously result of different procedures prescribed in

Government offices. There might be some negligence on the part of the Board but the negligence of such kind cannot be treated as fatal to the case of the Board, more particularly when a question of law falls for determination before the court. The learned first appellate relied upon the judgment in the case of P.K. Ramachandran v. State of Kerala and another 1998(1) J R 408 : 1997(4) RRR 242 (SC), to dismiss the application.

7. The learned counsel for the petitioners, while relying upon the judgment in case of Chandra Mani (supra), has placed great emphasis on the following observations :-

"When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the nole-making, file pushing and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community.

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The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

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Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

8. He has also relied upon the judgment in the case of S.S. Akolkar (supra) to further contend that delay has been sufficiently explained and the learned first appellate court should have condoned the delay. He also relied on the judgments of this court in cases of Gram Panchayat, Malot v. Prem Singh (1998) P L R 325 : 1998(2) RRR 604 (P&H) and State of Punjab v. Surinder Pal (1999) P L R 743 : 1999(4) RRR 176 (P&H).

9. The cumulative effect of the above settled judicial principles, facts of the case, as disclosed on record, clearly indicate that sufficient cause has been shown for condoning the delay of 28 days" in filing the appeal. The expression "sufficient cause" has to receive some liberal construction obviously within the four corners of law. The delay of 28 days cannot be said to be fatal in the facts of the present case, more particularly when such delay has been substantially explained.

10. For the reasons aforestated, I am of the considered view that the learned first appellate court should have condoned 28 days" delay in filing the appeal and should have decided the appeal on merits.

11. Consequently, the order dated 17.8.1998 passed by the learned First

appellate court is set aside. The application u/s 5 of the Limitation Act preferred by the present petitioners before the Court is allowed. The delay of 28 days in filing the appeal before that Court is condoned. The learned first appellate court is requested to hear the matter on merits.

The revision petition is, accordingly, allowed.

12. Revision allowed.