

(1991) 08 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

RAJASTHAN STATE INSURANCE And G.P.F. DEPTT.	APPELLANT
Vs	
RADHEY SHYAM GOYAL	RESPONDENT

Date of Decision : 27-08-1991

Acts Referred:

Citation : 1992 1 CPR 273 : 1994 2 CPC 658 : 1994 2 CPJ 525 : 1995 1 CLT 315

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi J.

Final Decision : Appeals dismissed

Judgement

1. THE question of limitation is involved in both the appeals. THEy were heard together. We consider it proper to dispose them of by a common order.

2. THE complainant-respondent filed two complaints which were registered as Complaint Nos. 429/89 and 430/89 by the District Forum, Jaipur. Both the complaints were decided by the District Forum on 17.12.1990, and certain directions with regard to payment of interest were issued by the District Forum. Aggrieved the Opposite Party-appellant has lodged two separate appeals. Appeal No. 121/91 arises out of Complaint No. 429/89 and Appeal No. 125/91 arises out of Complaint No. 430/89. THE appeals were filed on 21.2.1991 against the order dated 17.12.1990. Certified copies of the order appealed against have been submitted with the memo of appeal. THE certified copies show that the application for copy were made on 21.12.1990. THE date fixed for issuance of the copies was 2.1.1991. THE copies were taken delivery of on 2.1.1991. Time spent in obtaining the certified copies is 13 days. Period prescribed for filing the appeal is 30 days from the date of order as provided in Sec. 15 of the Consumer Protection Act, 1986 ("the Act" herein). As stated above both the appeals were filed on 21.2.1991. Office reported that they have been presented after 23 days of the expiry of the period of limitation. THE memos of appeals were accompanied by the applications under Sec. 5 of the Limitation Act for condonation of delay supported by affidavit of Mrs. Manju Mathur, Additional Director of Insurance and G.P.F. Department Rajasthan Jaipur. THE affidavits were sworn on 21.2.1991, the day on which the applications for condonation of

delay were presented. We may at once mention that Sec. 5 of the Limitation Act, 1963 is not applicable for condonation of delay in filing the appeal under the Act. THE applications ought to have been filed under proviso to Sec. 15 of the Act, which is of course in pari materia with Sec. 5 of the Limitation Act. THE deponent of the affidavit has stated that she is the officer incharge in the appeals. THE orders appealed against were passed on 17.12.1990 and according to the appellant the order was supplied on 2.1.1991. THERE is no dispute that the appellant is entitled to 13 days as time spent in obtaining the certified copies of the orders. It may be mentioned at this stage that the orders were passed on 17.12.1990 whereas the applications for copy were made on 21.12.1990. THE appellant is required to explain delay for 23 days. 19 days delay was caused even from the date of supply of the certified copies to the appellant as the certified copies were supplied on 2.1.1991. The crucial words used in proviso to Sec. 15 are "sufficient cause" and "satisfied". These words have also been used in Sec. 5 of the Limitation Act, 1963. Proviso to Sec. 15 of the Act has to be given the same meaning which has been attributed thereto over a long line of precedents under Sec. 5 of Limitation Act, 1963 and its predecessor statute of 1908. It was held in Ramlal and Others v. Rewa Coal Fields Ltd. (AIR 1962 SC 361) as under:- "...The context seems to suggest that "within such period" means within the period which ends with the last date of limitation prescribed. In other words, in all cases falling under Sec. 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed."

The Supreme Court in Bikram Dass v. Financial Commissioner and Others (AIR 1977 SC 2221) has succinctly held as follows:- "Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large majority of case-law has grown around Sec. 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay"

3. KEEPING these two authorities in view let us analyse para 3 of the application which is supported by the affidavit of the officer in-charge. Para 3 of the application is as follows:- "That for a departmental appeal, it is necessary to obtain concurrence of the Finance Department as well as the Department of Law and Legal Affairs for which earnest efforts were immediately made." It will also be useful to advert to para 4 of the application which is as under:- "That after complying with the departmental and administrative formalities, this appeal has been promptly filed without delay."

4. IN para 3 there is nothing to show about the delay of 23 days caused in presenting the appeal. It is conspicuously silent in regard to the period taken for obtaining the concurrence of the Finance Department as well as Department of Law and Legal Affairs. Merely by using the words "earnest efforts were immediately made" to say the least is most vague and not sufficient to explain the delay caused, for, it was incumbent to the appellant to satisfy the State Commission in regard to the sufficient cause envisaged by proviso to Sec. 15 of the Act. IN *State of West Bengal v. The Administrator, Howrah Municipality and Others* (AIR 1972 SC 7) it was laid down as under:- "Mr. D. Mukherji, learned Counsel for the first respondent, is certainly well-founded in his contention that the expression "sufficient cause" cannot be construed too liberally, merely because the party in default is the Government. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction...."

From the above it is manifest that even a much larger bigger body like the State, be it the Central Govt, or a State Govt, is on no different footing than the private litigant for the purpose of condonation of delay against the bar of limitation. IN *The Bihar State Board of Religious Trust v. Rameshrey Prasad Choudhary* (AIR 1977 Patna 272) it was held that the Bihar State Board of Religious Trust was not entitled to any different treatment than a private party. An autonomous Board or a Corporation being a much smaller and a compact body would obviously be even on a lower footing vis-a-vis the Central Govt, or the State Govt. It is not entitled to any different treatment than a private party. Mr. M.L. Vyas, learned Counsel for the appellants has placed strong reliance on A.I.R. 1987 S.C. 1353 which is a Division Bench judgment consisting of two honourable Judges of the Supreme Court. One of the question involved in that case was about the application for condonation of delay made by the State Govt. In para 3 while considering the question it was held that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts and that a liberal approach in the matters instituted in the Supreme Court could be made. It laid down certain principles which have been enumerated at page 1354 of the report. Our pointed attention was drawn to principle No. 5 mentioned therein which is as under:- "5. There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk."

The expression "sufficient cause" has to be construed liberally, this is also well settled. The principal question with which we are concerned is whether the appellants have succeeded in making out sufficient cause to our satisfaction on the basis of the averments made in para 3 of the application supported by affidavit. In the light of the principles laid down by the Supreme Court it is settled beyond cavil that it is incumbent on the appellant to explain each day of default beyond the terminus line of the prescribed period of limitation.

5. THE Opposite Party-appellant in both the appeals does not have even a semblance of a case for condonation. On its own showing, a delay of as many as 23 days has to be explained day by day. Far from doing so, there does not seem to be even an attempt to conform to the law. We have already extracted paras 3 and 4 of the application which are supported by affidavit of the officer incharge. THE relevant averments are totally cryptic and bald in his explanation of the admitted delay of 23 days. In the application it has even not been averred as to when the prescribed period of limitation expired and the facts or factors from that point till the date of the filing of the appeal. An omnibus version that in the processing of the appeal, the same could not be filed within limitation has been made which cannot advance the case of the appellant. THE appellant Department does not seem to be aware of the strict requirements of law herein and the burden it has to discharge to avail the benefit of condonation both under Sec. 5 of the Limitation Act, 1963 of the proviso to Sec. 15 of the Act.

6. FOR the foregoing reasons there is no merit in the applications for condonation of delay filed on both the appeals and they are dismissed. Inevitably the appeals of the appellant have, therefore, to be dismissed because of the bar of limitation. Appeals dismissed.