

(1995) 07 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No"s. 29317 to 29321 of 1994

Ramesh Govind Kulkarni

APPELLANT

Vs

Karnataka Appellate Tribunal

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 105, 119
Limitation Act, 1963 — Section 12 (2), 14, 4, 5

Citation : (1995) ILR (Kar) 2063 : (1995) 5 KarLJ 202

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : G.S. Kannur, for the Appellant; K. Nagaraj, H.C.G.P. for R-1 and R-2
and G. Balakrishna Shastry, for R-3, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—These Writ Petitions have been filed by the Petitioners for quashing of the order dated 19th April, 1994 passed by the Respondent-Karnataka Appellate Tribunal (Annexure-A) whereby the Tribunal has dismissed the appeals filed by the petitioners on the ground of limitation.

2. The said appeals being numbered 427, 428, 623, 626 and 627 and 1991 were filed before the Tribunal u/s 105 of the Karnataka Co-operative Societies Act 1959 (the Act for short) against the award of the Honorary Arbitrator of the Co-operative Societies. The office of the Tribunal on computation of limitation found four appeals being Nos.427/91, 625/91, 626/91 and 627/91 to be well within time after excluding the time taken in obtaining certified copies of the impugned award. But the Appeal No. 428 of 1991 was found to be belated by 92 days. The Tribunal dismissed all the appeals by taking a view that even for seeking exclusion of the requisite time taken in obtaining copies, a separate application seeking condonation of delay is necessary and that, since the petitioners failed to file such applications their appeals are liable to be rejected as barred by limitation.

3. Sections 105 and 119 of the Act are to the following effect:

105. APPEALS TO THE TRIBUNAL-Any person aggrieved by -

(a) any decision of the Registrar made under Clause (a) of sub-section (1) of Section 71; or

(b) any decision of the person invested by the State Government with powers in that behalf under Clause (b) of sub-section (1) of Section 71;

(c) any award of an arbitrator under Clause (c) sub-section (1) of Section 71; or

(d) any determination of a Liquidator under Clause (f) of subsection (2) of Section 71 ;

(e) any order made u/s 103 with a view to preventing any delay or obstruction in the execution of any decision or award that may be made u/s 71;

(f) any order passed u/s 69;

May within 60 days from the date of decision, award or order, as the case may be appeal to the Tribunal.

119. APPLICATION OF LIMITATION ACT-

The provision of sections 4, 5, 12 and 14 of the India Limitation Act 1908 shall be applicable to the filing of any appeal or application for revision under this Act. Therefore for ascertainment as to whether the appeal can be entertained as well within time, Sections 4, 5, 12 and 14 of the Limitation Act 1908 (hereinafter referred to as "the Limitation Act") will have their full play. Sections 5, 12(2) of the Limitation Act which have bearing on the question involved are to the following effects:

Section 5: Extension of prescribed period in certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation-The fact that appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

Section 12: Exclusion of time in legal proceedings-

(1) xxx xxx xxx

(2) In computing the period of limitation for an appeal or an application for leave to appeal for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or

reviewed shall be excluded.

(3) & (4) xxx xxx xxx

Explanation - In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

4. From the above provisions, it is quite clear that Section 12(2) of the Limitation Act, if construed in the context of Section 105 of the Act, provides for exclusion of the time requisite for obtaining a copy of the decision, award or order appealed from, in computing the period of limitation prescribed for filing the appeal before the Tribunal.

5. On the facts of the present case and in view of the statutory provisions noticed above the question that arises for consideration is as to whether for seeking exclusion of the time requisite for obtaining a copy of the decision, award or order appealed against, any application for condonation of delay in terms of Section 5 of the Limitation Act is required to be filed?

6. In the case of State of Uttar Pradesh Vs. Maharaj Narain and Others, it has been held by the Supreme Court that sub-section (2) of Section 12 enlarges the period of limitation prescribed by the statute. This Section permits the appellants to deduct from the time taken for filing an appeal the time required for obtaining a copy of the order appealed from. Therefore, so long as the time taken for filing the appeal is not found to be barred on exclusion of the requisite time for obtaining a copy of the decision, award or order, the appeal cannot be said to have been filed out of time so as to attract the application of Section 5 of the Limitation Act. In other words, if on exclusion of the period prescribed as provided u/s 12(2) of the Limitation Act the appeal is found to have been filed within the prescribed period, there is no occasion for seeking any further extension of time requiring filing of the petition for condonation of delay. Computation of limitation as provided under law has to be done by the Court or Tribunal concerned and it does not depend on any act to be performed by the appellant.

7. In the case of INDIAN STATISTICAL INSTITUTE vs. ASSOCIATED BUILDERS AND OTHERS AIR 1 978 SC 335 Para-10 it has been held by the Apex Court thus:

"Section 5 of the Limitation Act provides for extension of the prescribed period of limitation if the petitioner satisfies the court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition, Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition u/s 5 of the Limitation Act."

Therefore, in my opinion, the Tribunal has erred in dismissing the four of the appeals noticed above, on the ground that in the absence of an application filed for condonation of delay u/s 5 of the Limitation, appellants are not entitled to the

benefit of exclusion of the requisite time taken in obtaining the copies of awards/ orders/ decisions appealed from. Since in these appeals admittedly on exclusion of the period prescribed u/s 12(2) of the Limitation Act, the appeals have been found to be in time, it is incumbent on the part of the Tribunal to proceed to decide the appeals on merits.

8. So far as the Appeal No. 428 of 1991 is concerned, it has been found to be belated by 92 days. But, from the records, it seems that the appellant had incorporated necessary explanation pertinent to the delay in his Memo of Appeal itself. It cannot be disputed that for seeing condonation of delay, even if the appeal is ex facie found to be barred by limitation no formal application is required to be filed for seeking condonation of delay (See NADUBHAGOM N.S. KARAYOGAM vs. GOPALAN N AIR 1979 K.L.T 166, Smt. Shakuntala Devi Vs. Banwari Lal and Others,

9. Keeping in view the law as settled by the Courts if the Tribunal at all felt that there should be a separate petition for condonation of delay in the said appeal, it ought to have granted a reasonable opportunity to the appellant for filing the same. Accordingly, it is directed that if the appellant in the said appeal files a separate application either explaining that there is no delay keeping in view the respective provisions pertaining to limitation or, if there is any delay, for condoning the same on sufficient ground being shown, the Tribunal should dispose of the same in accordance with law.

9, For the reasons set out above, in my opinion the impugned order of the Tribunal cannot be sustained. It is accordingly quashed. Writ Petitions are allowed to the extent indicated above but without costs.