

(2016) 12 PAT CK 0034

In the Patna High Court

Case No : Miscellaneous Appeal No.118 of 2013

Rashmi Devi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23(3)

Citation : (2017) 1 BLJud 239 : (2017) 1 PLJR 309

Hon'ble Judges : Hemant Gupta, ACJ. and Dinesh Kumar Singh, J.

Bench : Division Bench

Advocate : Mr. Ashok Kumar Keshri, Advocate and Ms. Chhaya Mishra, Advocate, for the Petitioner in MA No.449 of 2014; Mr. D.K. Sinha, Senior Advocate and Mr. Anil Singh, Advocate, for the Respondent; Mr. Pravin Kumar Gupta, Advocate and Mr. Bhagya Narayan Jha, Advoc

Final Decision : Allowed

Judgement

Hemant Gupta, ACJ.(Oral) - The matter has been placed before this Bench in view of the order passed by the learned Single Bench of this Court on 2nd of August, 2016 in M.A. No.118 of 2013 referring the matter with the following question for the opinion of the Division Bench:

"A. Whether appellate court has got power to condone delay while entertaining appeal beyond the period prescribed under section 23(3) of the Railways Claims Tribunal Act?"

2. The said question arises out of the fact that the appellant filed an application before the learned Railway Claims Tribunal, Patna Bench (hereinafter referred to as "the Tribunal") in terms of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as "the Act"). Such claim application was dismissed. An appeal was filed as contemplated under Section 23 of the Act along with an application for condonation of delay of 52 days in filing the appeal. The learned Single Bench referred the matter to the Division Bench to examine the question that in the event, there is no specific provision for condonation of delay in filing of the

appeal, whether condonation of delay in filing the appeal can be condoned.

3. Learned counsel for the appellant refers to 1995 Supp (4) SCC 578 (Shantilal M. Bhayani v. Shanti Bai) to contend that the Appellate Court has the power to condone delay. On the other hand, Mr. D. K. Sinha, learned counsel for the Railways referred to a recent Division Bench order of Gujarat High Court in the matter of Union of India v. Gujarat State Electricity Corporation Limited [Civil Application (for condonation of delay) No. 12844 of 2015 in First Appeal (Stamp Number) No. 2264 of 2015) decided on 21st October, 2016] wherein, the provisions of the Act were examined and it was held that the appellate court has power to condone the delay. The relevant finding from the said judgment reads as under:-

"14. Against this backdrop of the provision of law, it seems that learned counsel for the applicant is justified in contending that non mentioning of the delay condonation power under Section 23 and mentioning of the same under Section 17, would not be construed as express exclusion of the said power so as to exclude the provision of the Limitation Act from its applicability to the case, as the observations of the Supreme Court in case of Hukumdev Narain Yadav (supra) of course cannot be said to be laying down so absolute a proposition of law. On the contrary, even in Hukumdev Narain Yadav (supra) also the Supreme Court did say that the Court has to examine the scheme of the Act for coming to the conclusion as to whether the provisions of Limitation Act are excluded or not?

16. In the instant case, the very provision for condonation of delay, as provided under Section 17, would militate against the Act and the scheme of the Act being construed as excluding the limitation provision, as the legislature has in fact provided delay condonation power in Section 17 itself. The same power need not be provided so far as Section 23 is concerned as it pertains the appeal to be led before High Court and High Court being Court, the provision of Section 29(2) would get attracted. Therefore, there was no requirement of providing specific power for condoning delay. The legislature, if at all, wanted to exclude the power in the High Court for condoning delay in filing of appeal, then legislature would have by way of express provision excluded the same. With profound respect to the High Court of Gauhati and High Court of Madhya Pradesh, this Court is unable to accept the proposition that the provision of the Act and the scheme based upon its object and reason, could be said to be one in which the provisions of Limitation Act appears to have been excluded. On the contrary, the provision of Section 17 expressly contains delay condonation power without there being any outer limit in the Tribunal and hence Tribunal, in the instant case, has even condoned delay on the part of the claimant of 13 years and 6 months. If this power is there under Section 17 to condone delay of any number of years, then absence of condonation power under Section 23 cannot be read as express exclusion by the legislature.

20. In view of this, we are of the considered view that the provisions of Limitation Act are applicable and therefore, the delay is sufficiently explained, as

the respondents have failed in pointing out how and in what manner the cause of action is said to have been given up by the applicant and therefore, sufficient cause is made out to condone the delay. Hence, the delay is condoned. Applications are allowed. Rule is made absolute to the aforesaid extent."

4. Apart from the aforesaid judgment, we may examine the provisions of the Act. An application before the Tribunal can be filed within three years from the date on which the goods in question were entrusted to the Railway Administration for carrying by Railway under clause (a) of sub-Section (1) of Section 17 and in the case of accident falling under clause (b) of sub section (1) of Section 17 within one year of the occurrence of the accident. Sub-section (2) of Section 17 confers power on the Tribunal to condone the delay in both the cases if the Tribunal is satisfied that sufficient cause for not making the application within such period is established. However, there is no specific provision for condonation of delay in filing of an appeal which is required to be filed within 90 days from the date of order appealed against. The relevant provision of Section 23 reads as under:-

"23. Appeals. - (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.

(2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the order appealed against."

5. The argument of the learned counsel for the Railways is that in terms of sub-Section (2) of Section 29 of the Limitation Act, where there is no provision in any Central or State Act, the provisions of the Limitation Act would apply. Though sub-section (3) of Section 23 contemplates limitation to file an appeal, but merely because there is no specific power conferred on the appellate Court to condone the delay, it cannot be inferred that the Court does not have power to condone the delay. An appeal against an order of the Tribunal lies to the High Court. The procedure of filing appeal as provided under the Civil Procedure Code would be applicable in the appeals to be preferred before the High Court in view of Section 141 of the Code of Civil Procedure. Therefore, the Limitation Act would be applicable to the Civil Court. Therefore, in the absence of any prohibition in the Act against the condonation of delay, the appellate court would have power to condone the delay in filing the appeal.

6. The judgments referred to by the learned Single Bench in the order dated 2nd August, 2016 in M.A. No.118 of 2013 taking a contrary view that the Limitation Act will not be applicable as judgments have been considered by the Division Bench of the Gujarat High Court. We respectfully agree with the view expressed by the Gujarat High Court in the matter of Gujarat State Electricity Corporation

Limited (supra) and held that the appellate court in appeal under Section 23 of the Act has power to condone the delay.

7. Since the question of law has been decided, the matter be placed before the learned Single Bench for decision on merits in accordance with law.