

(1985) 02 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition No. 32 of 1972

Rohtas Industries Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Emergency Risks (Factories) Insurance Act, 1962 — Section 11(1), 13
Limitation Act, 1908 — Section 29(2)
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : AIR 1985 Delhi 390

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : K.K. Jain, Pramod Dayal and A.D. Sangar, for the Appellant; S.N. Sapra, for the Respondent

Judgement

Sunanda Bhandare, J.—The petitioner 1, a public limited company is engaged in the business of manufacture, production and sale of cement, paper, vanaspati etc. and owns factories at Dalmianagar, Bihar. In the year 1962 Emergency Risks (Factories Insurance) Act, 1962 (hereinafter referred to as the Act) was enacted which provided for insurance of certain properties in India against damage by enemy action during the period of emergency. On 5th Dec. 1962 the Central Government put into operation the Emergency Risks (Factories Insurance) Scheme (Hereinafter referred to as the Scheme). The Scheme continued to be in force during the proclamation of emergency and expired with the end of emergency on 10th Jan. 1968. As per the requirements of the Scheme and the, Act the petitioner 1 was required to obtain insurance policies for the period between 1963 to 1966. On 8th April, 1968 the Enforcement Officer attached to the office of the Chief Enforcement Office, Eastern Region, Emergency Risks Insurance Scheme, gave notice to the petitioner that he had reasons to believe that the petitioner 1 had failed to insure its property as required under the provisions of the Act to the extent and for the periods indicated in the said

notice. Thereafter, certain correspondence ensued between the petitioner and the respondent and on 17th July, 1968 respondent 2 gave another notice to the petitioner that respondent 2 had reasons to believe that the petitioner had failed to insure its property to the extent and for the periods indicated in the said letter and to show cause within a fortnight why final determination be not made under Sub-section (1) of Section 11 of the Act. The petitioner 1 availed of the opportunity of personal hearing offered to it. However, respondent 2 rejected the basis of valuation adopted by the petitioner and made its own valuation. The petitioner 1 disputed the method of calculation followed by the Directorate taking the Income Tax rate or balance-sheet rate, whichever was lower, in respect of the different items of the assets and for different periods. Respondent 2, however, negated the contention of the petitioner 1 particularly with regard to depreciation and determined the amount of Rs. 6,62,874/- which according to the Directorate was the amount of premium evaded by the petitioner and demanded the petitioner to pay the said amount into the treasury within 30 days of the receipt of the said letter. Being aggrieved by this order of respondent 2 the petitioner 2 filed an appeal before respondent 1 u/s 13 of the Act on 22nd Oct. 1970. By its order dt. 9-7-1971 respondent 1 rejected the appeal of the petitioner as being time barred on the ground that the order of respondent 2 was received by the petitioner on 21st Sept. 1970 and the time limit of 30 days had already expired when the appeal was filed on 22nd Oct. 1970.

2. The petitioner, amongst other things, has challenged these orders of respondent 1 and respondent 2 in the present writ petition under Article 226 of the Constitution.

3. The learned Counsel for the petitioner submitted that respondent 2 erred in ascertaining the rate of depreciation by taking the total depreciation provided in the balance-sheet of the petitioner and dividing it by the original cost of the said assets and applying the said rates to its replacement cost to arrive at the due depreciation as provided under the scheme. It was further submitted that there was no evasion of premium since there was no under insurance. The petitioner further contended that respondent 1 should have condoned the delay and decided the appeal on merits. It was submitted that respondent 1 had the power to condone the delay, however,, it failed to exercise the power vested in it and, therefore, the order rejecting the appeal was unreasonable and bad in law.

4. Learned Counsel for the respondent fairly conceded that when there is no specific provision expressly excluding the applicability of Section 5 of the Limitation Act, a quasi-judicial authority would have the power to condone the delay if a proper ground was made.

5. The Supreme Court in the case of Mangu Ram Vs. Municipal Corporation of Delhi, has observed thus:

There is an important departure made by the Limitation Act, 1963 in so far as the provisions contained in Section 29, Sub-section (2) is concerned. Whereas

under the Indian Limitation Act, 1908, Section 29 Sub-section (2), Clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of the Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29, Sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent which they are not expressly excluded by such appeal or local law. Section 29, Sub-section (2), Clause (b) of the Indian Limitation Act, 1963 in clear and unambiguous terms provides for the applicability in Section 5 and the ratio of the decision in Kaushalya Rani's case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 29(2)(b) of the Limitation Act, 1908. Since under the Limitation Act, 1963 Section 5 is specifically made applicable by Section 29, Sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced.

5A. There is nothing in the present Act which expressly excludes the applicability of Section 5 of the Limitation Act. A mere provision of limitation providing 30 days" time to file an appeal does not disable the applicability of Section 5 of the Limitation Act. Respondent No. 1 was, therefore, not correct in disallowing the prayer of the petitioner for condonation of delay on the ground that there is no provision) for condonation in the Act.

6. Respondent 1 has disposed of the appeal only on the ground of delay and not decided on merits at all. The respondent 1 no doubt had the power to condone the delay if a proper ground was made out. The petitioner may not have any grievance if respondent 1 takes a decision on merits.

7. Therefore, without expressing any opinion on the merits of the case I think this is fit case where the order of respondent 1 has to be set aside. In the result the order dt. 9-7-1971 is quashed with a direction that respondent 1 after giving the petitioner an opportunity by way of a personal hearing will decide the appeal filed by the petitioner on merits. Needless to say that since long time has elapsed the appeal should be disposed of at an early date. After rule nisi was issued by this Court after hearing counsel for both the sides on 24th Feb. 1972 the order of stay of recovery of the amount was made absolute. This order of stay will have to continue till the final disposal of the appeal. There will be no order as to costs.