
(2015) 12 CAL CK 0012
In the Calcutta High Court
Case No : C.O. 1329 of 2015

Sasanka Sekhar Mitra

APPELLANT

Vs

Sital Kumar Banerjee and Others

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 2
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14

Citation : (2015) 12 CAL CK 0012

Hon'ble Judges : Harish Tandon, J.

Bench : Single Bench

Advocate : Probal Mukherjee, Anirban Roy, Sounak Bhattacharya and Anil Dhar, for the Appellant; Krishnendu Banerjee, Idrish and N.P. Basu, for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J.—It is not in dispute that the West Bengal Cooperative Tribunal is an Appellate Authority against an award passed by the Arbitrator under the West Bengal Co-operative Societies Act. It is also not in dispute that the Act gives power to the Tribunal to condone the delay, if an appeal challenging the award is filed after the expiration of the statutory period.

2. The source of power to condone the delay is eminent in the statutory provision and, therefore, it is a duty of the Tribunal to consider the said application on the basis of the averments made therein.

3. The award is passed in Dispute Case No. 5/RCS of 2012 on 16th October, 2012. The petitioner herein challenged the said award in an application under Article 226 of the Constitution of India before this Court, which was registered as AST 173 of 2013.

4. It is sought to be argued before this Court that the Tribunal is not functioning and, therefore, an aggrieved person cannot be rendered remediless. This Court

noticed the provisions contained under Section 147 of the West Bengal Co-operative Societies Act, 2006, which provides the right to an aggrieved person against an award to prefer an appeal before the Tribunal and permitted the petitioner to file the appeal along with an application for condonation of delay within 7 days from the date of obtaining the certified copy of the order. Admittedly the petitioner filed an appeal along with an application for condonation of delay in terms of such leave granted by this Court in the writ petition.

5. The Tribunal even after recording that the petitioner promptly moved before the Hon'ble High Court with an application under Article 226 of the Constitution of India, but was swayed by the fact that he was aware of his remedy provided by way of an appeal and, therefore, the explanations offered for delay in preferring the same is unacceptable and not sufficient.

6. The Tribunal further construed the expression "sufficient cause" to mean that the person must come within the reasonable time and is depending upon the conduct of the party.

7. The power to condone the delay can be found in different statutes containing the similar expressions and by catena of decisions rendered in this regard, it is a settled proposition of law that the Court should be liberal in dealing with such application and encourage the disposal of the matter on merit.

8. The meaning of the expression "sufficient cause" cannot be brought within the straitjacket formula, as each case has its unique fact and features and depend upon various factors. It is equally settled that the length of delay is immaterial, but the sufficiency of cause is, even the delay of shorter period cannot be condoned in absence of sufficient cause. On the other hand, the delay of longer period can be condoned, if the party was prevented by sufficient cause.

9. In the instant case the Tribunal itself observed that the petitioner promptly moved the High Court with the Writ petition, but refused to condone the delay as the petitioner was oblivion of the fact that his right is provided by way of an appeal. The Tribunal overlooked the provisions contained under Section 14 of the Limitation Act, which provides that if a person has proceeded in good faith on an advice in a proceeding, which later on found to be incompetent, the period between which such proceeding was continuing, shall be excluded for the purpose of limitation.

10. It would be relevant to quote the said provision, which runs thus:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction--

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other

cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."

11. Admittedly the petitioner was pursuing remedy under the Writ jurisdiction before this Court, which was later on found to be non-maintainable in view of the express provision contained under the Act providing the remedy by way of an appeal. Furthermore this Court permitted the petitioner to file an appeal before the Tribunal with substantive application for condonation of delay and directed the Tribunal to decide the said application within a specified time.

12. This Court, therefore, cannot agree with the findings recorded by the Tribunal that there has been a deliberate laches and negligence on the part of the petitioner in preferring an appeal within the statutory period provided under Section 147 of the Act. Furthermore, the Court should not embark on the merit of the appeal while considering an application for condonation of delay. If the Court decides to enter into the merit of the appeal, it ought to have provided an opportunity to the respective parties treating the appeal to have been filed within the statutory period and disposing of the same by recording reasons on merit. The Court should confine on the sufficiency of the cause for the purpose of regularizing the appeal and not for the purpose of dismissal of the appeal on the anvil of limitation.

13. This Court, therefore, finds that the approach of the Tribunal in dealing with an application for condonation of delay is improper and contrary to the settled proposition of law.

14. The order impugned, therefore, suffers from illegality and/or infirmity and cannot be sustained. The same is hereby set aside.

15. The application for condonation of delay is hereby allowed.

16. The Tribunal is directed to formally register the appeal in the docket and shall fix the date for calling the affidavits by the respective parties.

17. It goes without saying that the Tribunal shall make efforts to dispose of the said appeal as expeditiously as possible after affording an opportunity of hearing

to the respective parties and preferably within three months from the date of the communication of this order in accordance with law.

18. With the above observations the revisional application is allowed.

19. There will be no order as to costs.