
(2018) 11 CAL CK 0011
In the Calcutta High Court
Case No : Civil Order No.198 Of 2018

Shanti Devi Bahety

APPELLANT

Vs

Municipal Commissioner

RESPONDENT

Date of Decision : 16-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 115
Constitution of India, 1950 — Article 227

Citation : (2018) 11 CAL CK 0011

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Debrup Bhattacharya, P. K. Tulsyan, Rupock Ghosh, Ayan Datta, Antony Patrick Gomes, Debjit Mukherjee, Susmita Chatterjee

Final Decision : Disposed Off

Judgement

The applicant is aggrieved by an order dated 23.07.2017 passed in Appeal Case No. 84 of 2014 by the Municipal Corporation Tribunal. By the said

order, an application for condonation of delay of about 8 months was rejected by the Tribunal.

The applicant seeks to canvass that he had applied for the certified copy of the order impugned in the appeal on the same date i.e. 04.11.2013. He

submits that the same was made available to him on 11.07.2014. According to him, the time taken to obtain certified copy is liable to be excluded and

hence his appeal must be treated within the period of limitation.

Per contra, learned counsel for the opposite party places the last paragraph of the order impugned in the appeal which had directed that the copies of

the order should be delivered to the parties.

It is extremely difficult to believe that despite such observation, the applicant

could not obtain a certified copy of the order impugned in the appeal within a reasonable time thereof.

The learned counsel appearing on behalf of the opposite party submits that a document dated 05.06.2017 was obtained by him by the R.T.I. from the K.M.C. wherefrom it appears that the Corporation has communicated that the revisionist applied for a certified copy of the order dated 04.11.2013 on 11.07.2014. This contradicts the documents annexed to the application under Article 227 of the Constitution of India. These are however disputed questions of fact, which this Court cannot go into.

Apart from the factual inconsistency as regards the date of application of certified copy, the learned counsel appearing on behalf of the opposite party

first relies upon a decision of the Hon'ble Supreme Court in the case of *Rajkamal Kalamandir (P) Ltd. vs. Indian Motion Pictures Employees*??

Union & ors. reported in 1963 (1) LLJ 318 wherein in the paragraphs 5, 6 & 7 of the said judgment, it is observed by the Supreme Court that a Court

under Article 227 of the Constitution of India and/or Section 115 of the Code of Civil Procedure cannot correct every mistake of law. What is,

however, relevant, is to note is that the said judgment was rendered in respect of an application to the High Court under Article 227 of the Constitution

of India against a final award passed by the Industrial Tribunal which had declined application of the new wage scale in favour of the employees

concerned. The instant case involves a rejection of an application for condonation of delay. Therefore, the said judgment is not distinguishable on facts.

The learned counsel further relies on a decision of Hon'ble Supreme Court in the case of *Khimji Vidhu vs. Premier High School* reported in 1999 (9)

SCC 264 wherein in paragraph 5 of the said judgment, it was held that a finding of fact by a court that has dealt a matter by trial and evidence should

not be interfered with by the High Court under Article 227 of the Constitution of India.

An application under Article 227 of the Constitution of India in the said matter before the High Court, was against a decree of the Small Causes Court

under the Bombay Rent Control Act affirmed by the appellate court of Small Causes. It is the findings of such a Trial Court and Appellate Court that

had the power to deal with the questions of fact and upset the same that was

sought to be interfered with by the High Court under Article 227 of the Constitution of India. It is in this context that the Hon'ble Supreme Court has said that the errors of findings of fact should not be interfered with by the High Court in exercise of powers under Article 227 of the Constitution of India.

Considering the rival contentions of the parties and the two decisions cited by the opposite party, I am of the clear view that the instant case before the tribunal is substantially different from the ones cited before me.

The tribunal has refused to entertain an appeal on account of delay and also inconsistency in the date of application for certified copy. While, it is true

that the opposite party's objections as regards misrepresentation of facts cannot not be brushed aside but it is equally true that a person for

whatever reason in committing delay in agitating substantive rights of appeal cannot be crucified from exercising such statutory right on the ground of

delay. The delay may be bona fide or even to an extent mala fide but since it is only a question of condonation of delay, this court deems it necessary

to interfere with the order impugned. The opposite party cannot be prejudiced by an adjudication of an appeal. The inconvenience of the opposite party

in this regard can always be compensated with costs and penalties. This, in my view, would be appropriate and substantial justice. A substantive right

of appeal cannot be curtailed on the ground of delay. An application for condonation of delay must be construed liberally.

In any event, the opposite parties cannot claim that any substantive rights have accrued to them by reason of such delay, any special rights that may

have accrued to the revisionist by reason of this delay shall stand negated and abide by result of the appeal before the tribunal.

In those circumstances and in the interest of justice, the Tribunal is directed to entertain the appeal upon payment of costs assessed at Rs. 17,000/-

payable by the revisionist to the opposite party. The tribunal shall proceed and take up the appeal within a period of one week from the date of

communication of this order. The appeal itself shall be disposed of within a period of three months from the date of receipt of a copy of this order.

It is made clear that the tribunal shall decide the appeal on its merits and totally uninfluenced by this order. It is clarified that this court has not in

anyway gone into the merits of the rival contentions of the parties.

With the above observations, the instant civil revisional application stands

disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.