

(1980) 11 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 148 of 1971

Sher Singh Mehta

APPELLANT

Vs

The Kailash District Co-operative Marketing and Supply
Federation Ltd., Dhalli and Others

RESPONDENT

Date of Decision : 21-11-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 29(2), 5

Citation : AIR 1981 HP 23 : (1981) ShimLC 62

Hon'ble Judges : H.S. Thakur, J

Bench : Single Bench

Advocate : Ramesh Chand, for the Appellant; L.S. Panta, Dy. A.G. and Devinder Gupta, for the Respondent

Final Decision : Allowed

Judgement

H.S. Thakur, J.—In this writ petition, the petitioner has challenged the order of respondent No. 3 (Annexure B to the writ petition). The relevant facts to determine this writ petition may be stated.

2. In the writ petition it is stated by the petitioner that 21! bags of potato seeds (up to-date A-I type) at the rate of Rs. 86 per bag, and 5 bags of Dhankhri type at the rate of Rs. 56 per bag, were sold to respondent No. 1, during the year 1965. The sale is stated to have taken place on 24/25-11-1965 at the village of the petitioner. It is further stated that at the time of the sale, the above rates were agreed to and minimum price assured was Rs. 50 per bag. It is admitted by the petitioner that Rs. 10,000 were paid to him at the time of sale and the remaining price was to be paid after the potatoes were sold in the market. It is further asserted that calculating the price of these bags of potatoes at the rates mentioned above, a sum of Rs. 8,578, after adjusting the advance amount of Rs. 10,000, remains to be paid to the petitioner. The petitioner states that he made demand for this balance amount but respondent No. 1 did not pay the same.

It is averred that the respondent No. 1 filed a counter-claim of Rs. 10879.35 against the petitioner before the Deputy Registrar, Co-operative Societies, Himachal Pradesh, in connection with this transaction. The dispute was referred to respondent No. 2 for adjudication, as an arbitrator. The respondent No. 2 after considering the respective claims of the Parties made an award and negated the claim of respondent No. 1. Under the award, the petitioner was held not entitled to receive anything more than the amount of Rs. 10,000 already advanced to him. The respondent No. 1 was also not held entitled to recover anything from the petitioner. The respondent No. 1 being dissatisfied with the award, preferred an appeal before the Registrar, Co-operative Societies, Himachal Pradesh (respondent No. 3). The respondent No. 3 accepted the appeal filed by respondent No. 1 and set aside the order of the Deputy Registrar (Marketing) and directed that the respondent (petitioner in his case) shall pay Rs. 8,388.26 to the appellant with interest at the rate of 9 per cent till the date of final payment. The above order was passed by the respondent No. 3, on 1-7-1971.

3. Aggrieved by the order of respondent No. 3, the petitioner filed this writ petition, on 7-9-1971. A Division Bench of this Court by an order dated 14-9-1971 admitted the writ petition and stayed the operation of the order, meanwhile. The stay order does not appear to have been vacated.

4. The only point that has been stressed by Shri Ramesh Chand, the learned counsel for the petitioner, is that the order of respondent No. 3 is a nullity, inter alia, on the ground that the appeal was entertained after the expiry of the period of limitation. He has referred to Section 93 of the Himachal Pradesh Co-operative Societies Act, Act III of 1969. Under Sub-section (2) of Section 93, appeal against any decision or order under Sub-section (1) shall be made within 60 days from the date of the decision or the order. It is contended by the learned counsel for the petitioner that the appeal was barred by limitation by one month and 11 days. It is pointed out by the learned counsel that the point of limitation being a pure question of law can be allowed even at the stage of hearing. He has referred to a decision of Full Bench of Punjab High Court in Santa Singh v. Jopal Singh v. Rajinder Singh AIR 1965 Pun 415. He has referred to paragraph 8 of this judgment. In this para, reference has been made to a decision in AIR 1944 24 (Privy Council), in which their Lordships of the Privy Council allowed the question of limitation to be raised even in the court of last resort with the following observations:--

"Upon one point, however, this appeal has been urged. It is not a point taken at any stage of the proceedings in either of the Indian Courts, but, as it is a point of limitation, it is prima facie admissible even in a court of last resort."

It is further pointed out by the learned counsel for the petitioner that in the grounds of appeal preferred by respondent No. 1 before the respondent No. 3, copy marked Annexure "C", it has been prayed that in case the appeal is considered time barred, the same may kindly be treated as revision petition. It is

pointed out by the learned counsel for the respondents that the respondent No. 3 had condoned the delay in filing the appeal. The order was shown to me in the court and the respondent No. 3 has made a short order that the delay is condoned.

Respondent No. 3 has not given any reasons for condoning the delay. Even a separate application and an affidavit for condoning the delay had not been filed. On this ground, it is contended by the learned counsel for the petitioner that the appeal could not be entertained and the delay in filing the appeal could also not be condoned. It is further contended that in the grounds of appeal the respondent No. 1 did not pray that the delay in filing the appeal be condoned. The only prayer made was that in case the appeal was considered time barred, the same be treated as a revision petition. On this account, it is contended by the learned counsel for the petitioner that the respondent No. 3 has not applied his mind and has proceeded almost mechanically in the matter.

5. The next point which is urged on behalf of the petitioner is that the equity is in favour of the petitioner. According to the petitioner the total price of 216 bags of the potato seeds, sold to respondent No. 1 came to Rs. 18,426 and the price of 216 empty bags to Rs. 432. Accordingly, if the order of respondent No. 3 is maintained, the petitioner shall be liable to pay a sum of Rs. 8,388.26 with interest to respondent No. 1. As such, the total value of 216 bags of seed potato and 216 empty bags, would remain a little over Rs. 1,600 (sic). According to the petitioner, such an order is highly unjust and inequitable. It is also contended by the learned counsel that the award given by respondent No. 2 is at least equitable and there was no justification in setting aside the same. According to the petitioner (he respondent No. 3 has not properly applied his mind and has acted contrary to the principles of natural justice and fair play. The learned counsel further contends that the respondent No. 1 could not give a pool rate of potatoes to the petitioner, but had to pay him the actual price of the consignment, on the basis of first come first served principle. It is also urged that the respondent No. 3 had otherwise also no power to condone the delay in filing the appeal, as the Limitation Act was not applicable to these proceedings.

6. It is contended by the learned counsel for the respondents that the delay in filing the appeal was condoned by the respondent No. 1, in the presence of the petitioner and no objection was taken by the petitioner in this behalf. It is further contended that the Limitation Act applies to the proceedings under the Himachal Pradesh Co-operative Societies Act. Reference has been made to the decision in *Ittyavira Mathai v. Varkey Varkey* AIR 1364 SC 907. In this case the Supreme Court observed as under: --

"Moreover, the appellants could well have raised the question of limitation in the High Court in support of the decree which had been passed in their favour by the trial court. Had they done so, the High Court would have looked into the records before it for satisfying itself whether the suit was within time or not. The point raised before us is not one purely of law but a mixed question of fact and law. No

specific ground has even been taken in the petition made by the appellant before the High Court for grant of a certificate on the ground that, the suit was barred by time. In the circumstances, we decline leave to the appellant to raise the point of limitation before us."

My attention has been also invited to a judgment of the Supreme Court in *D.P. Mishra Vs. Kamal Narayan Sharma and Another*, In this judgment their Lordships of the Supreme Court after reproducing Sub-section (2) of Section 29 of the Limitation Act, have held that in the absence of any express provision to the contrary in a special statute, the provisions of the Indian Limitation Act, 1908 contained in Sections 4 and 9 to 18 and 22 shall apply to the extent to which they were not expressly excluded by any special or local law. On this basis it is contended by the learned counsel for the respondents that the Limitation Act was applicable to the proceedings. It is pointed out that there is no express provision in the Himachal Pradesh Co-operative Societies Act excluding the operation of the said Act.

7. It is also contended on behalf of the respondents that the High Court cannot act as an appellate court and cannot re-examine the relevant facts and circumstances which led to the making of the order by respondent No. 3. Reference has been made to the decision in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, . Their Lordships of the Supreme Court in this judgment observed as under :--

"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However, extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

Mr. Daphtary, who appeared for the respondent, said nothing to controvert this position. His argument was that if all along the authorities and the Government had proceeded upon a particular footing and dealt with the rights of the parties on that basis, it was not open to them afterwards to change front and give a go-by altogether to the conception of the rights of parties entertained by them till then. According to him, there was manifest injustice to his client in allowing them to do so and this was the reason which impelled the High Court to make the order which is the subject-matter of challenge in this appeal."

The learned counsel for the respondents has also referred to the decision in *Joint Registrar of Co-operative Societies v. P. S. Rajagopal Naidu* AIR 1970 SC 902. In this judgment also their Lordships of the Supreme Court observed as under:--

"We have been taken through the material parts of the orders of the Registrar and the Joint Registrar and we do not find any such infirmities in them which would justify interference by the High Court under Article 226 of the Constitution. The High Court could not act as an appellate Court and reappraise and re-examine the relevant facts and circumstances which led to the making of the orders of supersession as if the matter before it had been brought by way of appeal. The limits of the jurisdiction of the High Court under Article 226 when a writ in the nature of certiorari is to be issued are well known and well settled by now and. it is pointless to re-state the grounds on which any such writ or direction can be issued."

8. I have heard the learned counsel for the parties at length and have also perused the relevant record. It is not disputed even by the learned counsel for the respondents that the appeal before the respondent No. 3 was filed beyond the period of limitation. It is also not disputed that no separate application u/s 5 of the Limitation Act for the purpose of condonation of delay was filed. I am of the view that in terms of subsection (2) of Section 29 of the Limitation Act, the said Act will apply to the proceedings under the Himachal Pradesh Co-operative Societies Act, inasmuch as there is no express provision in the said Act to the contrary. A perusal of the grounds of appeal filed by respondent No. 1 before respondent No. 3 shows that the only prayer made by the respondent No. 1 was that in case the appeal was considered time barred, the same be treated as a revision petition. The prayer was not made for the condonation of delay.

9. After the limitation for an appeal had expired a vested right had accrued to the petitioner. Such a right could not be negated lightly. I feel that respondent No. 3 acted arbitrarily in condoning the delay. No reasons have been given in the order for condoning the delay. In fact, that was also not the prayer of respondent No. 1. Such an act of respondent No. 3, is patently, in violation of the principles of natural justice. As such, this Court in the exercise of its powers under Article 226 of the Constitution of India, is empowered to do justice to an aggrieved party. There is nothing on record to show that the petitioner had waived the objection regarding limitation in the appeal filed by respondent No. 1 before respondent No. 3. All the same, the petitioner has specifically contended in the writ petition that the appeal was barred by limitation. Under the circumstances, the petitioner can raise the question of limitation in this writ petition. The Full Bench decision in *Santa Singh Gopal Singh* AIR 1965 Pun 415 (supra) case, also supports the view that I have taken. Since the petitioner succeeds on the above grounds, it is not necessary to go into other contentions, which involve disputed questions of fact.

10. For the foregoing reasons, the order of respondent No. 3, Annexure "B", is quashed and the writ petition is allowed, but with no order as to costs.