(2009) 07 MAD CK 0431

In the Madras High Court

Case No : M.P. No. 1 of 2008 in CMASR 56511 of 2008

Sivakumar Spinning Mills Pvt. Ltd. — APPELLANT

Vs

Shanmughavelayutham and Others — RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 33, 34
Companies Act, 1956 — Section 10F
Constitution of India, 1950 — Article 226, 227
Limitation (Amendment) Act, 1953 — Section 10, 11, 12, 13, 14

Citation : (2010) 1 LW 609

Hon'ble Judges : T. Sundanthiram, J

Bench : Single Bench

Advocate : S. Silambannan, for the Appellant; Veneet Subramani, for the Respondent

Final Decision : Dismissed

Judgement

T. Sundanthiram, J.—This is a petition filed seeking condonation of delay of 64 days in filing the Civil Miscellaneous Appeal challenging the order passed by the Company Law Board, Chennai, in CA No. 7 of 2008 in CP No. 84 of 2007 dated 29.02.2008.

2. This petition is filed u/s 5 of the Limitation Act. It is stated in the affidavit filed in support of the petition that the Respondent herein filed the petition before the Company Law Board in C.P. No. 84 of 2007 and also filed two applications in C.A. Nos. 237 and 255 of 2007, seeking for interim directions for verifying the genuineness of the disputed signatures by the Forensic Department and to send the copies of certificates of posting to the postal department to verify whether the letters were sent on the date as mentioned. Out of the said two applications, one application in C.A. No. 255 of 2007 was withdrawn. The Petitioner herein filed another application in C.A. No 7 of 2008 praying to forward certain documents which were filed as annexures to the company petitions to verify the signatures in the stamp papers and also dates of signatures in the stamp papers

so as to verify the genuineness. The Company Law Board passed orders in both the applications directing the parties to produce the original documents for passing appropriate orders. In pursuance of the order, the Petitioner herein produced the original documents. Accordingly, the said documents were handed over, examined and report received. According to the Petitioner, he sought legal opinion and in the mean time, summer vacation also intervened and subsequently, the present appeal was preferred. In these circumstances, there had been a delay of 64 days. It is the said delay which is sought to be condoned u/s 5 of the Limitation Act.

3. Mr. S. Silambanan, learned senior counsel for the Petitioner submitted that the Respondents herein had preferred this Civil Miscellaneous Appeal against the order passed in the application filed by the Petitioner herein in CA No. 7 of 2008, wherein originally the Petitioner were interested in proceeding with the main company petitions itself but, as it was understood by the Petitioner that it was not possible after due consideration, the Petitioner preferred the appeal. The learned Counsel submitted that since the CMA preferred by Respondent in CMA No. 2801 of 2008 is pending before this Court, the CMA filed by the Petitioner should also be heard by condoning the delay in preferring the appeal, otherwise prejudice would be caused to the Petitioner herein.

4. Mr. Vidyaraja, learned Counsel appearing for the Respondent submitted that the petition seeking condonation of delay of 64 days is not maintainable. As per the Section 10F of the Companies Act 1956, an appeal against the order of the Company Law Board should be filed within 60 days from the date of communication of the decision or order and if it could not be filed within the provided 60 days, it should be filed within another period of 60 days by showing sufficient cause for not filing the appeal within the time.

5. The learned Counsel for the Respondent relied on the decision reported in (2008) 2 ComLJ 213 (P&H) (Pawan Goel v. KMG Milk Food Ltd., and Ors.) and also relied on the decision of the Honourable Supreme Court reported in Union of India Vs. M/s Popular Construction Co.,).

6. This Court considered the submissions made by both parties and perused the records. Section 10F of the Companies Law Board which prescribes the period of limitation for filing the appeal is as follows:

10-F. Appeal against orders of the Company Law Board, - Any person aggrieved by any decision or order of the Company Law Board (made before the commencement of the Companies (Second Amendment) Act, 2002) may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

7. The above said provision prescribes the period of limitation of 60 days for preferring an appeal against the order of the Company Law Board. The proviso, u/s 10F enables the party to prefer the appeal within a further period of 60 days by explaining to the satisfaction of the High Court that the Appellant was prevented by a sufficient cause from filing the appeal within the period of limitation. The language u/s 10F is explicit that if the limitation period of 60 days is over, then any further delay could be condoned by the High Court on being satisfied that there was sufficient cause, but such delay should not exceed 60 days.

8. The Honourable Supreme Court while deciding a question whether the provisions of the Section 5 of the Limitation Act, 1953 are applicable to an application challenging the award u/s 34 of the Arbitration and Conciliation Act 1996 held as follows:

7. There is no dispute that the 1996 Act is a "Special Law" and that Section 34 provides for a period of limitation different form that prescribed under the Limitation Act. The question then is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads:

34 Application for setting aside arbitral award-

(1) xxx xxx xxx (2) xxx xxx xxx (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are ''but not thereafter'' used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase ''but not thereafter'' wholly otiose. No principle of interpretation would justify such a result.

9. In the case reported in (2008) 2 Com LJ 213 (P&H) (Pawan Goel v. KMG Milk Food Ltd., and Ors.) also while dealing with the petition to condone the delay, in the appeal filed against the order passed by Company Law Board, the Court held as follows:

23. It may also consider the next question whether the Appellant is entitled to seek condonation of delay u/s 5 read with Section 14 of the Limitation Act or the period of limitation can be extended beyond sixty days over and above initial period of sixty days as prescribed u/s 10F of the Act.

24. Even though, condonation of delay u/s 5 of the Limitation Act is permissible without any limit provided the applicant is able to establish sufficient cause. It is settled law that once the court is convinced or satisfied regarding the existence of a sufficient cause, the length of a period becomes irrelevant. However, this proposition is attracted only if Section 5 is applicable. It has been contended on behalf of the Respondents that Section 5 of the Limitation Act has no application in appeal u/s 10F. The contention is based upon the provision of Section 29(2) of the Limitation Act read with Section 10F which, inter alia, provides the period of limitation for filing the appeal and also for condonation of delay by virtue of the proviso thereto. Section 29(2) of the Limitation Act provides for application of the provision of the Limitation Act from Sections 4 to 21 to a special or local law unless their application is specifically excluded by special or local law which reads as under:

Section 29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

25. There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the prescribed period of limitation, the expression used in Section 10F being "further period not exceeding sixty days". It has been argued by Mr. Rawal, advocate, on behalf of the Appellant that the Companies Act does not exclude the application of Section 5 of the Limitation Act and notwithstanding the maximum period of sixty days for condoning the delay under proviso to Section 10F, delay can further be condoned by virtue of Section 5 read with Section 14 of the Limitation Act on sufficient cause being shown."

26. With a view to consider and appreciate the arguments in its right perspective, the object, purport and the scope of proviso to Section 10-F needs to be examined. Exclusion can be implicit or explicit. It depends upon the language used in a particular statute. The intention can only be gathered from expression contained in the statute. The proviso to Section 10-F has created an absolute bar for extension of period of limitation beyond sixty days apart from

the period of limitation of sixty days prescribed u/s 10F. The expression "not exceeding" does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

10. In view of the above decision, and in view of the language used in Section 10F of the Companies Act 1956, this Court holds that an appeal against order of the Company Law Board has to be filed within a period of 60 days from the date of the communication of the decision or an order and beyond that period the appeal could be filed with a petition to condone the delay within another 60 days and not beyond that period. In view of the proviso u/s 10F of the Companies Act, it is not possible for the High Court to condone the delay of more than 60 days in preferring the appeal.

11. In this case, there is a delay of 64 days. The learned senior counsel Mr. S. Silambanan, after going through the decisions cited above, fairly conceded to the proposition laid down and then submitted that he may be permitted to seek his remedy by filing petition under Article 226 or 227 of Constitution of India. However, this does not deem it appropriate to express any opinion regarding the request of the counsel.

12. In the result, the maintainability petition fails and the same is accordingly dismissed. Consequently, the C.M.A. SR. No. 56511 of 2008 is closed. No costs.

