
(2011) 02 MAD CK 0427
In the Madras High Court
Case No : O.S.A. No. 414 of 2010

Sree Rajendra Mill Ltd.

APPELLANT

Vs

IOCEE Exports Ltd.

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 5
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2011) 3 BC 538 : (2011) 163 CompCas 247 : (2011) 3 CompLJ 235 :
(2011) 3 CTC 684 : (2011) 8 RCR(Civil) 2217

Hon'ble Judges : R. Banumathi, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : V. Raghavachari, for A.R.M. Arunachalam, for the Appellant; M. Aravind Subramaniam, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—This Appeal arises out of the order of the learned single Judge in Application No. 4291 of 2010 in C.S. No. 698 of 2001 dated 19.11.2010 dismissing the application filed by the Appellant u/s 5 of Limitation Act declining to condone the delay of 1932 days in filing application to set aside the expert decree dated 05.4.2005.

2. Respondent/Plaintiff filed C.S. No. 698 of 2001 for recovery of Rs. 13,94,815/- along with subsequent interest. In October 2001, Appellant engaged a counsel to represent their case and had also given the vakalat. For non-filing of written statement, the suit was decreed expert on 05.04.2005. Appellant filed application to set aside the expert decree along with A. No. 4291 of 2010 to condone the delay of 1932 days in filing application to set aside the expert decree. Application was filed on the ground that by the order dated 06.9.2001, Appellant company was declared as Sick company by the Board for Industrial and Financial Reconstruction [BIFR] and case has been registered under No. 311 of

2001 and the said BIFR was pending even in the year 2010. When the proceedings was pending before BIFR and u/s 22 of Sick Industrial Companies (Special Provisions) Act, 1985 [for short SICA], the company being Sick, no proceedings could continue before the Court and the Court has to await the proceeding and final orders before BIFR and on that ground, Appellant prayed for condonation of delay of 1932 days in filing the application to set aside the expert decree dated 05.04.2005.

3. Denying the averments, Respondent/Plaintiff filed counter stating that the long range of delay of 1932 days has not been satisfactorily explained. According to Respondent, on 31.7.2006, Respondent/Plaintiff sent a letter requesting the Appellant to settle their dues pursuant to the decree dated 05.4.2005 along with a copy of the decree and the said letter was acknowledged by one Kasi Viswanathan, an employee of the Appellant company on 02.8.2006, for which there had been no response . Therefore, according to Respondent even though Appellant had knowledge of the decree on 02.8.2006, they have not chosen to file application and therefore, the delay is not satisfactorily explained. Further according to Respondent, Appellant has not included the name of Respondent in the list of creditors filed before BIFR.

4. Pointing out that the letter has been sent by the Respondent on 31.7.2006 and that inspire of receipt of the same, Appellant had not responded to the same, the learned single Judge held that Appellant had knowledge of the decree. Learned single Judge further held that once the Defendant had knowledge of the decree, Defendant ought to have taken steps to set aside the decree and the inordinate delay has not been satisfactorily explained.

5. Challenging the impugned order, Mr. V. Raghavachari, learned Counsel for Appellant contended that in view of BIFR proceedings where by an order dated 06.9.2001, the Appellant company had been declared as Sick company and in view of bar u/s 22 of SICA, no proceedings could continue before the Court and the Court has to await the proceedings and final orders before BIFR and the decree passed on 05.04.2005 is unsustainable. It was further contended that notwithstanding the long range of delay and in view of bar u/s 22 of SICA, the learned single Judge ought to have condoned the delay.

6. Mr. M. Aravind Subramaniam, learned Counsel for Respondent submitted that the employee of the Appellant company - Kasi Viswanathan had received the letter and inspire of receipt of the letter on 02.8.2006, Appellant had not taken steps to set aside the expert decree. Placing reliance upon Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, , it was further submitted that in cases of extraordinary delay, there has to be a strict approach and the learned single Judge has rightly declined to condone the delay and the same cannot be interfered with.

7. Main contention of Appellant is that by the order dated 6.9.2001, Appellant/Defendant company had been declared as Sick company by BIFR and case has

been registered in No. 311/2001 and the same is pending before BIFR and in view of the bar u/s 22 of SICA, no proceedings could continue and the proceedings shall remain suspended and the decree passed on 05.4.2005 is non-est.

8. Per contra, learned Counsel for Respondent/Plaintiff has submitted that Respondent has not received any communication either from BIFR or from the Appellant about the pendency of case No. 311 of 2001. According to Respondent, its name has not been included in the list of creditors filed before BIFR and the decree passed by this Court in C.S. No. 698 of 2001 has not been brought to the notice of BIFR. Even though, proceedings in BIFR has been averred in the affidavit, the learned single Judge did not advert to the same. We also do not propose to express any opinion on the proceedings said to be pending in BIFR and the effect of the same on the suit.

9. Point falling for consideration is whether the Appellant had notice of the decree and the delay has been satisfactorily explained. As pointed out earlier, on receipt of the suit notice, Appellant had engaged a counsel in October 2001. Since they have not filed the written statement, expert decree came to be passed on 05.04.2005. In an application u/s 5 of Limitation Act, Court has to see whether there is sufficient cause for the delay.

10. In the matter of condonation of delay, two important matters are relevant viz., (i) the right to the Respondent accrued to him by lapse of time should not be disturbed light-heartedly and (ii) that if sufficient cause is proved by the Appellant or the applicant, he does not acquired automatically the right to have the delay condoned, but Section 5 of Limitation Act vests in the Court with the discretion to condone the delay.

11. In the matter of condonation of delay, it is not the length of the delay is, criterion for deciding whether the delay should be condoned or not but the acceptability of the explanation is the criterion. It is also settled principle that if the party is not vigilant about his right, he must explain the delay. The conduct of the party seeking condonation as a relevant factor to be considered by the Court in allowing or refusing the condonation. The expression "sufficient cause" u/s 5 of the Limitation Act to receive liberal construction so as to advance substantial justice. Ordinarily, delay in filing the appeal should be condoned, when no negligence in action or want of bonafide is imputable to the applicant and that in an application for condonation of delay "sufficient cause" should receive liberal construction so as to advance substantial justice. While condoning the delay, the discretion has to be exercised to advance substantial justice.

12. Though a liberal approach has to be made in a matter of condoning delay in filing the appeal, it must not give a licence to litigants to ignore the statutory provisions, which mandates that application has to be filed within a particular time. Liberal approach is also not a licence to encourage gross negligence, irresponsible and inactive attitude of the party. However, in every case of delay

there can be some lapse on the part of the litigant. That alone is not enough to turn down his plea and to shut the door against him.

13. As pointed out earlier, in October 2001, Appellant had engaged the counsel to represent the case and had also filed vakalat. In the affidavit, Appellant has stated that since they engaged the counsel, they were under the bonafide belief that the company's rights were duly protected and that they had no knowledge of the decree being passed. Copy of decree dated 05.4.2005 was sent to the Appellant by the Respondent vide a letter dated 31.7.2006 and the same was said to have been received by one Kasi Viswanathan, an employee of Appellant company on 02.08.2006.

14. The point is whether knowledge could be attributed to the Appellant on the ground that the said Kasi Viswanathan had received the said letter on 02.8.2006. In the rejoinder filed by the Appellant, it is clearly averred that the said Kasi Viswanathan had left the services of the Appellant company even on 31.5.2006 and that he has tendered his resignation letter as early as April, 2006. In the typed set of papers, Appellant had also produced the copy of resignation letter of the said Kasi Viswanathan and also Form-10 filed by the Appellant under Employees' Provident Funds Scheme. It is seen from Form-10 that Kasi Viswanathan is said to have left the service on 31.5.2006. Even though the said letter dated 31.7.2006 addressed to the Appellant Company, since the same is said to have been received by the erstwhile employee [Kasi Viswanathan], in our considered view, no negligence can be attributed to the Appellant.

15. When the Defendant has alleged non-receipt of the said letter dated 31.7.2006 and urges the same for not taking steps, the reasons stated by the Appellant does not appear to be false or frivolous. It must be remembered that in every case of delay, there is some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea. As held by the Supreme Court in 1999-1-L.W. 739 (N. Balakrishnan v. M. Krishnamurthy), if the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, Court must show utmost consideration to the suitor.

16. In our considered view, the learned single Judge did not keep in view the averments in the rejoinder filed by the Appellant. In any event, in view of BIFR proceedings, the effect of the decree passed has to be considered. We are of the view that even though the delay is a long range of delay, the same has been satisfactorily explained by the Appellant and the order of learned single Judge is liable to be interfered with.

17. In the result, the order of learned single Judge in A. No. 4291 of 2010 in C.S. No. 698 of 2001 dated 19.11.2010 is set aside and this Appeal is allowed. The Registry is directed to number the application filed under Or. XIV, Rule 8 of O.S. Rules read with Or.9, Rule 13 CPC and we request the learned single Judge to consider the Application and pass appropriate orders. Consequently, connected M.P. is closed. No costs.