

(2009) 02 KAR CK 0077

In the Karnataka High Court

Case No : Writ Petition No's. 10232 and 10230 of 2008

Sree Rama Areca Nut Traders

APPELLANT

Vs

Areca Processing and Marketing Co-operative Society Limited
and Another

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2009) 4 KarLJ 645

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.V. Prakash, for the Appellant; R.V. Jayaprakash, for Respondent 1 and Asha M. Kumbaragerimath, High Court Government Pleader for Respondent 2, for the Respondent

Judgement

N.K. Patil, J.—The petitioner in W.P. No. 10232 of 2008 is assailing the correctness of the order dated 18-6-2008 passed by the Karnataka Appellate Tribunal in Revision Petition No. 28 of 2008, vide Annexure-N and also the order dated 10-12-2007, passed by the 2nd respondent, on I.A. No. I, in Dispute No. DRS:DIS-494/01-02, vide Annexure-M.

2. The petitioner in W.P. No. 10230 of 2008 is assailing the correctness of the order dated 18-6-2008 passed by the Karnataka Appellate Tribunal in Revision Petition No. 29 of 2008 vide Annexure-N and also the order dated 10-12-2007 passed by the 2nd respondent on I.A. No. I in Dispute No. DRS:DIS:493/2001-02 vide Annexure-M.

3. In these two petitions, first respondent-Society has raised disputes before the 2nd respondent in Dispute No. DRS:DIS:494:2001-02 and in No. DRS:DIS:493:2001-02. In the said disputes, 2nd respondent has filed I.A. No. I u/s 5 of the Limitation Act, 1963 for condonation of delay in raising the said disputes. The said delay has been condoned and accepted the disputes raised by the first respondent against these petitioners by its order dated 6-3-2002.

Assailing the correctness of the said orders passed by the second respondent, petitioners have filed appeals before the Karnataka Appellate Tribunal, Bangalore in Appeal Nos. 428 of 2002 and 430 of 2002. Both the appeals had come up for consideration before the Appellate Tribunal on 6th September, 2004. The Appellate Tribunal has allowed both the appeals and remanded the matter to the second respondent for fresh disposal as per law and also in the light of the observations made in the said orders. After the remand, second respondent has taken up the matters for consideration and passed the impugned orders on I.A. No. I in the disputes as referred above, without conducting proper enquiry and without complying the directions issued by the Appellate Tribunal on 6th September, 2004 in Appeal Nos. 428 of 2002 and 430 of 2002. Against the orders impugned passed by the second respondent on the application, petitioners have filed revision before the Karnataka Appellate Tribunal in Revision Nos. 28 and 29 of 2008 and those revision petitions have been dismissed as not maintainable at the stage of admission itself, that too, by the single member and not by the two members as required under the regulations. Being aggrieved by the impugned orders passed by both the authorities, as referred above and seeking appropriate reliefs, as stated supra, petitioners herein felt necessitated to present these writ petitions.

4. I have heard learned Counsel appearing for petitioners and learned Counsel appearing for respondents.

5. After careful evaluation of the material available on record, including the grounds urged by the petitioners and after careful perusal of the orders passed by the second respondent vide Annexures-N and M respectively, it emerges from the order at Annexure-M passed by the second respondent and the reasoning given in the order for condoning the delay in filing the disputes raised by the first respondent that, second respondent has committed grave error and miscarriage of justice in not conducting proper enquiry and in not assigning any valid reasons and for not complying the directions issued by the Appellate Tribunal dated 6th September, 2004 in Appeal Nos. 428 and 430 of 2002 respectively. The Appellate Tribunal in its order dated 6th September, 2004 has observed that, it can be seen from the award and the lower Court record that, there is no discussion or finding to say that the dispute filed is in time and the point raised i.e., the limitation issue is being question of fact needs to be dealt in detail and hence, it is a fit case to set aside the case and remand it to the second respondent for fresh enquiry and to give fresh findings in the ends of the justice and accordingly, remanded the matter. The specific direction issued by the Appellate Tribunal in its order is neither considered nor there is any application of mind by the second respondent while deciding the matter and passing the impugned orders, except stating that, already order has been passed and that has been accepted by the Karnataka Appellate Tribunal and therefore, the question condoning the delay does not arise, then also, the delay is liable to be condoned. It appears that, second respondent has not applied his mind as to why the matter has been remanded for consideration and under misconception notion and without going

through the directions issued by the Appellate Tribunal as stated supra, he has passed the said orders. Against the said orders, petitioners have filed revision petitions before the Appellate Tribunal in Revision Nos. 28 and 29 of 2009 and the said revision petitions were rejected as not maintainable, against which, the petitioners have presented these petitions. Taking all these relevant factors into consideration, I am of the considered view that, the impugned orders passed by the second respondent cannot be sustained and they are liable to be set aside at threshold. Likewise, the Appellate Tribunal has also committed the same error while dismissing the revisions as not maintainable, when the matters had come up for consideration, that too, by the single member. As per the regulations, the single member is not entitled to pass final orders and he can only issue notice and grant interim order and the final order has to be passed by the Bench consisting two members. Therefore, the said orders cannot be sustained and they are liable to be set aside.

6. Having regard to the facts and circumstances of the case as stated above, the writ petitions filed by petitioners are allowed in part.

The impugned order dated 18-6-2008 passed by the Karnataka Appellate Tribunal in Revision Petition No. 28 of 2008, vide Annexure-N and also the order dated 10-12-2007, passed by the 2nd respondent, on LA. No. I, in Dispute No. DRS:DIS-494/01-02, vide Annexure-M (in W.P. No. 10232 of 2008) and the order dated 18-6-2008 passed by the Karnataka Appellate Tribunal in Revision Petition No. 29 of 2008 vide Annexure-N and also the order dated 10-12-2007 passed by the 2nd respondent on LA. No. I in Dispute No. DRS:DIS:493/2001-02 vide Annexure-M (in W.P. No. 10230 of 2008) are hereby set aside.

The matters stand remitted back to the second respondent for reconsideration afresh and to take appropriate decision in accordance with law, after affording reasonable opportunity of hearing to the petitioners and first respondent and decide the matter in compliance of the directions issued by the Appellate Tribunal on 6th September, 2004 in Appeal Nos. 428 of 2002 and 430 of 2002 respectively, and dispose of the same, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this order.

Learned Government Pleader is permitted to file memo of appearance for second respondent within two weeks from today.