

(2011) 08 P&H CK 0288

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19289 of 2010 (O and M)

State of Haryana and Others

APPELLANT

Vs

Hindustan Machine Tools Limited and Others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 43
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1
Limitation Act, 1963 — Section 25, 5

Citation : (2011) 164 PLR 297

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The issue of maintainability of appeal arises on the issue of limitation. An appeal filed against the order of Board for Industrial & Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions), Act (SICA) was presented along with an application to condone the delay u/s 5 of the Limitation Act. The provision for an appeal under SICA is contained u/s 25 of the Act as follows:-

25. Appeal

(1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the appellate authority.

Provided that the appellate authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority may, after giving an opportunity to the appellant to be heard, if he so desires, and

after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against or remand the matter to the Board for fresh consideration."

The proviso makes it possible for the Appellate Authority to entertain an appeal after the period of 45 days, but not after 60 days from the date unless it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Where the statute itself provides for a particular period of limitation and also gives a scope for relaxation the period and stipulates beyond time, no further relaxation will be possible than what the Act itself lays down. This point came to be decided by the Hon''ble Supreme Court while dealing with the provisions of the Arbitration Act that contains a reference to setting aside of an award u/s 34. Section 43 of the Arbitration and Conciliation Act states specifically that the Limitation Act of 1963 is applicable. However, Section 34(3) which provides for a period of limitation of 3 months from the date of passing of the award for an application to be made for setting aside the award also provides that a further period of 30 days will be available if reasons are given for not filing the petition within 3 months'' period. Dealing with the situation whether Section 5 could be invoked by a party, who filed such an application beyond a period of 30 days after the initial period of 3 months had expired, the Hon''ble Supreme Court has held in *State of Goa Vs. Western Builders, and Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others*, that Section 5 cannot be attracted when the statute provides for a particular period for condonation of delay.

2. The learned counsel for the petitioners refers to a decision of the Hon''ble Supreme Court in *Kailash v. Nanhku and Oothers*, 2005(4) Supreme Court Cases 480, to say that Section 5 could be invoked even in such a situation. The applicability of Section 5 was considered in the context of an application filed under Order 8 Rule 1 CPC and the amendment that has been brought about by Act 22 of 2002 that provides for 90 days for filing a written statement and sets out also a further period of 30 days for giving an extension of time. In *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*, , the Hon''ble Supreme Court has stated that the time prescribed for filing the written statement was only directory and not mandatory and, therefore, the extension of time that a person sought u/s 5 could always be invoked. What is possible for a procedure in law cannot be applied equally to substantive law that sets out a specific period of limitation. This has been considered by the Hon''ble Supreme Court even earlier in *Union of India Vs. M/s Popular Construction Co.*, , that made inapplicable the application for condonation of delay u/s 5 for filing a petition or setting aside the award. The same principle could apply to this as well. I am not prepared to join issues on the merits contended by the State and if the Appellate Authority had dismissed it on the point of limitation, I am of the view that the decision was correct and would require no intervention. The issue of extending the period of limitation itself cannot be done through a writ petition, as held in a decision of the Delhi High Court in *Anil Mehra v. East India Weaving Limited*,

(2001) 2 R.A.J. 323.

The writ petition filed by the State is, for the above reasons, dismissed.