
(2012) 07 MP CK 0105
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 320 of 2012

State of M.P.

APPELLANT

Vs

Sarika Grih Nirman Sahakari Samiti, Gwalior

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2012) 5 MPHT 467

Hon'ble Judges : J.K. Maheshwari, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Raghvendra Dixit, Govt. for the State, for the Appellant; Vivek Jain, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Maheshwari, J.—This appeal has been filed against the order dated 9th May, 2007 passed by the learned Judge of this Court in W.P. No. 1061/05 disposing of the bunch of writ petitions. Against the said order, the writ appeal has been preferred on 15-5-2012 with the delay of 1968 days, which is more than five years. The period of limitation prescribed for intra-Court appeal is of 45 days. The explanation in the application (W-IA No. 3389/12) so put forth is that the Collector on 16-8-2007 and 19-4-2010 requested to the Additional Advocate General to give opinion for filing the appeal. However, there is no document available on record to substantiate the said plea. It is further stated in the application that, thereafter, two request letters were issued on 20-10-2010 and 8-8-2011 but on account of various reasons, the opinion was not given and as the contempt petition was pending before the High Court and the legal opinion was not given, under such circumstances, the writ appeal has been preferred in anticipation of the opinion. The reference to the judgment of the Apex Court in the case of State of Haryana Vs. Chandra Mani and others, , has been made in the application. In view of the foregoing reasons so stated in the application, it is

urged that sufficient ground to condone the delay is made out and, therefore; condoning the delay, the application may be allowed. Per contra, Shri Vivek Jain, learned Counsel appearing on behalf of the respondent contends that the order has been passed on 9-5-2007 and the writ appeal has been preferred by the delay of more than five years. Merely mentioning the fact that the opinion was sought which was not given by the Additional Advocate General and the appeal has been preferred in anticipation of the opinion, same cannot be said to be sufficient reason for condonation of delay in filing the appeal. It is urged that in case, where an intra-Court appeal is provided from the order passed by the learned Single Judge to the Division Bench of the same Court, the delay must be explained with great care and caution. In the present case, no explanation has been put forth. Merely mentioning the ground that the contempt petition is pending and, therefore, the writ appeal has been preferred, same cannot be said to be the reason sufficient to condone the delay.

2. Heard the learned Counsel appearing on behalf of the parties. After hearing, the relevant provision of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 (for brevity "the Adhiniyam, 2005"), which prescribes the limitation and the reasons for sufficient cause to record satisfaction while condoning the delay is required to be seen, however, it is reproduced as thus:--

2. Appeal to the Division Bench of the High Court from a judgment or order of one Judge of the High Court made in exercise of original jurisdiction.-- (1) ***

(2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a Single Judge:

Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.

Explanation:-- The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this sub-section.

3. In view of the aforesaid, it is clear that an appeal under sub-section (1) of Section 2 of the Adhiniyam, 2005 shall be filed within 45 days. As per the said proviso, it is clear that the appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that "he had sufficient cause for not preferring the appeal within such period": The word "sufficient cause" has been explained in the explanation appended thereto whereby, it is made clear that if the petitioner is misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period, the same may be termed to be sufficient cause within the meaning of this sub-section.

4. In view of the aforesaid legal position, the averments so made in the application do not fall within the ambit and scope of the said proviso indicating

sufficiency of the cause, for the purpose of condonation of the delay. Iven otherwise, it can be safely observed that for an intra-Court appeal against the judgment of a learned Single Judge passed in exercise of the original jurisdiction under Article 226 of the Constitution of India, the appeal is to be heard by the Division Bench comprising two of the Judges of the same Court. In such cases, the parties present in the Court has to apply in the same Court before the Division Bench. However, in such matters, the sufficiency of the cause explaining delay is required to be tested in the light of the proviso enumerated under the Adhiniyam, 2005. In the present case, the appeal has been filed by the delay of 1968 days, which is more than five years. It is indicated in the application that even on writing letters on 16-8-2007 and thereafter on 19-4-2010, opinion to file an appeal was not given by the learned Additional Advocate General. However, after writing subsequent letters on 20-10-2010 and 8-8-2011, the appeal has been filed in anticipation of the opinion. It is not explained that why the Collector after writing a letter on 16-8-2007 waited for more than 2 years and 8 months to write another letter. It is not the case of the appellants that they were misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period. In such circumstances, the cause as indicated in the application does not fall within the purview of the sufficient cause for the purpose of condonation of delay showing bonafide, on the part of the appellants. In that view of the matter, we are of the considered view that the appeal filed by the appellants is hopelessly barred by time to which plausible explanation assigning sufficiency of cause has not been put forth. Hence, in our view, this appeal being hit by time deserves to be and is hereby dismissed, however, with no order as to costs.