

(2014) 10 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1679/2011 (L) in Civil Writ Petition
No. 294/2001

State of Rajasthan

APPELLANT

Vs

Irshad Khan

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 10 RAJ CK 0096

Hon'ble Judges : V.K. Mathur, J;Raghuvendra S. Rathore, J

Bench : Division Bench

Advocate : Ashish Sharma and Rajendra Prasad, AAG, Advocate for the
Appellant; Sandeep Saxena, Advocate for the Respondent

Judgement

1. The matter comes up on an application (13462/2009) under Section 5 of the Limitation Act filed by the appellant with the prayer that delay in filing the appeal be condoned.

2. At the outset, it may be mentioned that this application was filed alongwith appeal (07438/2009), challenging the order dated 09.07.2008, in the year 2009. Thereafter, an amendment was made in Rule 155 of the Rajasthan High Court Rules, 1952 as a result of which, memoranda and petition, after presentation, were to be registered in the Register concerned as provided under Rule 850, in the manner as given in the amendment. Further, amendment was brought in Rule 850 where the word "presentation" was substituted in place of "admission and no defective case shall be entered therein". Likewise, an amendment was brought in Rule 852 where the existing rule regarding register of defect cases was to be omitted. The said amendments were deemed to have come into force w.e.f. 01.01.2011.

3. The instant case was listed before the Court on 24.05.2011 and the appellant was granted four weeks" time to remove defects, failing which the appeal was to be dismissed automatically without reference to the Court. Thereafter, when the

matter was listed before the Court on 31.10.2012, the appeal was registered as (1679/2011). The amendment in the High Court Rules with regard to registration of memoranda or petition, after presentation, were to be registered, had come into effect from 01.01.2011 but the Registry had registered the instant appeal even though the same was pending since 2009 and initially it was already registered on the defect side (07438/2009). However, the application under Section 5 of the Limitation Act continued to be numbered as (13462/2009). Therefore, the registration of this appeal by the Registry on the ground that the amendment has been made in the Rajasthan High Court Rules, 1952 is erroneous for the simple reason that the said amendment was to be made applicable only from 01.01.2011 and not to those filed prior to it whereas the instant appeal as well as the application under Section 5 of the Limitation Act had been filed in the year 2009.

4. The office, in the present case, had pointed out that the appeal was time barred by 325 days. The respondents had filed reply to the application raising objection to the prayer for condonation of delay in filing the appeal. The appellant has filed rejoinder to the said reply to the application under Section 5 of the Limitation Act. A bare perusal of the application, which lacks in material particulars, only gives out that after passing of the impugned order dated 09.07.2008 the matter was sent to the Legal Department where time was consumed on account of administrative reasons. Thereafter, it was finally decided, recently, to file appeal and the officer incharge was appointed thereafter. Further, it was averred in the application, in a general manner, that factors which caused delay are peculiar and characteristic of the functioning of the Government and the procedural delay incidental to the decision making process.

The respondents, in its reply, prayed that the application under Section 5 of the Limitation Act filed by the appellant be dismissed. Besides the fact that the instant case is squarely covered by a judgment of Division Bench of this Court, they had raised objection and came with the case that the delay in the instant case which is more than 300 days, is not justified and the same has not been explained. The appellant had then filed a rejoinder to the reply stating that after obtaining the certified copy of the impugned order on 31.07.2008, ultimately decision to file appeal was taken by the Government on 01.05.2009. The delay in respect of subsequent events of appointing officer incharge, etc. are given in the rejoinder. But since obtaining the certified copy of the order on 31.07.2008 to the appointment of the officer incharge on 01.05.2009, no explanation whatsoever has been given. Therefore, we are of the considered opinion that delay in filing the present appeal, of about 325 days, has not been satisfactorily explained.

5. As requested by the parties, we have also considered the matter on merits. It has been submitted by the counsel for the respondents that the controversy involved in the present case is squarely covered by decision of a Division Bench in the case of Khalid Ali vs. State of Rajasthan & Ors. (DB Civil Writ Petition No.

1011/1988), decided on 18.11.1988. This fact could not be controverted by the counsel for the appellant. Therefore, even on merits this special appeal has no force.

6. In view of the above, we are of the considered opinion that the appellant has failed to explain the long delay of 325 days in filing this appeal and that they have no case even on merits as the issue involved herein already stands decided in the case of Khalid Ali (supra).

7. In the result, the application (13462/2009) filed under Section 5 of the Limitation Act is dismissed.

Consequently, the appeal (1679/2011) as well as stay application (12519/2011) also stand dismissed.