
(1986) 11 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 5 of 1981

The Kailash District Co-operative Marketing and Supply
Federation Ltd., Dhalli

APPELLANT

Vs

Sher Singh Mehta and Others

RESPONDENT

Date of Decision : 07-11-1986

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1988 HP 1 : (1987) ShimLC 101

Hon'ble Judges : T.R. Handa, J;R.S. Thakur, J

Bench : Division Bench

Advocate : Devinder Gupta, for the Appellant; M.S. Chandel, Asstt. A.G. and Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Handa, J.—This letters patent appeal is directed against the order dated 21st November, 1980, recorded by a single Judge of this Court allowing Civil Writ Petition No. 148 of 1971 filed at the instance of the present respondent No. 1, Shri Sher Singh Mehta. Since the controversy surviving at this stage between the parties pertains to a pure question of law, it is not considered necessary to give the factual details leading to this appeal. The following short narration would suffice for appreciating the subsisting controversy:

2. The appellant in this case is a society registered under the Himachal Pradesh Cooperative Societies Act, 1969, hereinafter called "the Act". Respondent No. 1, the writ petitioner was a member of this society. In the year 1965, respondent No. 1 supplied a consignment of potatoes to the appellant-society at the rates which were mutually agreed upon. Subsequently a dispute arose between the appellant and respondent No. 1 concerning the price of the said consignment of potatoes. Respondent No. 1 claimed Rs. 8578/- against the appellant on account of balance of the sale price of its consignment whereas the appellant made a counter-claim of Rs. 10,870.35 against respondent No. 1, presumably on account

of inferior or damaged quality of the consignment. The fact, however remains that the aforesaid dispute between the parties was referred to the arbitration of the Deputy Registrar (respondent No. 2) for arbitration in accordance with the provisions of the Act. This arbitrator made his award on 2nd September, 1970. The arbitrator in his award rejected the claim of respondent No. 1 as also the counter-claim of the appellant in toto. The appellant-society then preferred an appeal against that part of the award of the arbitrator which operated to reject its counterclaim of Rs. 10,870.35. The appeal was preferred before respondent No. 3, the Registrar Co-operative Societies u/s 93(2) of the Act. The Registrar vide his order dated 1-7-1971, a copy of which was attached with the writ petition as Annexure-B, allowed that appeal and directed respondent No. 1 to pay Rs. 8288.26 with future interest at the rate of 9% per annum to the appellant.

3. Respondent No. 1 feeling aggrieved, challenged the aforesaid order of the Registrar Co-operative Societies by filing the above mentioned civil writ petition in this Court. The main ground which was pressed on behalf of respondent No. 1 in support of his challenge against the appellate order of the Registrar Co-operative Societies was that the appeal preferred by the present appellant before the Registrar u/s 93(2) of the Act, being prima facie and admittedly time barred, the same could not be entertained and deserved outright dismissal. The Registrar in entertaining and allowing that appeal had acted without jurisdiction and his order was therefore, a nullity. This ground appears to have found favour with the learned single Judge who vide his impugned judgment quashed the order of the Registrar allowing the appeal of the appellant.

4 . Before we proceed further we would like to point out that as per admitted position, the appeal preferred by the appellant against the order of the Arbitrator before the Registrar Co-operative Societies had been filed u/s 93(2) of the Act and that such an appeal could be filed only within sixty days from the date of the award. It is also not in dispute that in view of the provisions of Section 29(2) of the Limitation Act, the provisions contained in Sections 4 to 24 inclusive of that Act are applicable to appeals preferred under the Act. In terms of Section 5 of the Limitation Act the Registrar therefore, had the jurisdiction to condone the delay in filing the appeal provided the appellant could satisfy him that there was sufficient cause for not preferring the appeal within the prescribed period. It is also agreed between the parties that in view of the bar of limitation, as placed by Section 3 of the Limitation Act, the appeal of the appellant, if time barred was required to be dismissed although limitation had not been set up as a defence but this was subject to the provisions contained in Sections 4 to 24 of the Limitation Act which include Section 5 referred to above. It may also be stated at this stage that in its grounds of appeal filed before the Registrar Cooperative Societies, the appellant had made its prayer on the point of limitation in the following language:

In case, this appeal is considered time barred, the same may kindly be treated a

revision petition.

Now the language in which the aforesaid prayer was made by the appellant is by itself sufficient to justify the conclusion that the appellant was not in a position to even plead much less to show a sufficient cause for not filing its appeal within the prescribed period. All that was stated on behalf of the appellant in its appeal before the Registrar was that in case the appeal was considered time barred, which admittedly it was the same may be treated as a revision petition. It was in other words an implied admission on the part of the appellant that it was not in a position to plead any sufficient cause for not filing the appeal within the prescribed period.

5. Now the jurisdiction which vested in the Registrar to condone the delay in filing the appeal u/s 5 of the Limitation Act certainly could not be invoked in a case of this type where the appellant had conceded its inability to show sufficient cause for not filing the appeal within time. In fact no prayer can be said to have been made by the appellant seeking condonation of delay in filing its appeal and in the absence of such a prayer the Registrar in our view had certainly no jurisdiction to condone the delay u/s 5 of the Limitation Act, which confers a discretionary jurisdiction in the appellate authority to condone delay but only after it is satisfied that there was sufficient cause for condoning such delay. In the instant case therefore, the Registrar in our view had no option but to dismiss the appeal in terms of Section 3 of the Limitation Act.

6. Shri Devinder Gupta learned counsel appearing for the appellant, however, argues that the Registrar had the jurisdiction to entertain even a time barred appeal and in case, he entertains and allows such an appeal his order though illegal would not be called without jurisdiction and a nullity so as to justify interference by this court in exercise of its writ jurisdiction. In support of this argument the learned counsel relies upon a Division Bench decision of the Punjab and Haryana High Court given in the case of Additional Director (I) Consolidation of Holdings, Punjab and Another Vs. Raghwant Singh Gurbachan Singh and Others, In that case a revision petition which had been filed after the expiry of the prescribed period of limitation had been entertained and allowed by the Director Consolidation in exercise of his jurisdiction u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The order of the Director was challenged in the High Court on the ground that the same was without jurisdiction having been made on a revision petition filed after the expiry of prescribed period of limitation. The writ petition was allowed by a single Judge of the Court. The matter, however, being taken to the Division Bench in a Letters Patent Appeal, the learned Judges of the Division Bench reversed that decision. In doing so they relied upon the following observations of the Supreme Court made in the case of Ittavira Mathai Vs. Varkey Varkey and Another,

All that the decision relied upon AIR 1935 85 (Privy Council) says that Section 3 of the Limitation Act is peremptory and that it is the duty of the court to take notice of this provision and give effect to it even though the point of limitation is

not referred to in the pleadings. The Privy Council has not said that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity.

After quoting in extenso the above observations of the Supreme Court the learned Judges of the Division Bench gave their own interpretation to these observations in the following language:

The legal proposition which emerges from the study of the abovementioned decisions of the Supreme Court is that though a decision on a question of limitation relates to the question of jurisdiction of the Court deciding the question but an order based on an erroneous decision of such a question or an order passed without suo motu noticing such a bar and deciding it, is not an order without jurisdiction and cannot therefore, be classed as a nullity so as to be liable to be quashed in certiorari proceedings. An order of a tribunal on a question of limitation, as indeed on any other legal question, would no doubt be liable to be set aside if it is either based on extraneous considerations or based on no evidence whatever, or contains an error of law apparent on its face.

7. In the case of Ittyavira Mathai (supra) decided by the Supreme Court, a decree passed by the Civil Court in a time barred suit was sought to be challenged in collateral proceedings on the ground that it was a nullity because the suit was barred by time. It was, in these circumstances while considering the effect of an earlier decree passed in a different suit and which had not been challenged by way of appeal as provided under the CPC that the Supreme Court expressed the view that such a decree could not be treated as a nullity having been passed without jurisdiction since the court had the jurisdiction to decide the question of limitation rightly or wrongly. We fail to appreciate how these observations of the Supreme Court can be pressed into service in a matter of the instant type. There is no challenge in this case to a decree or order passed in some collateral proceedings. The order passed in a time barred appeal by the Registrar u/s 93(2) of the Act is directly under challenge in these proceedings and it is certainly for this court to examine if the order suffers from any error of law or other infirmity so as to call for interference by this Court in exercise of its writ jurisdiction. As earlier observed the order of the Registrar allowing the appeal of the appellant u/s 93(2) of the Act suffers from an apparent error of law in as much as the Registrar had entertained a time barred appeal without any prayer being made to him for condoning the delay much less a sufficient cause being shown to him for such condonation. He had in the circumstances no option but to dismiss the appeal as time barred in terms of the provisions of Section 3 of the Limitation Act. Even if it be assumed that he acted within his jurisdiction in entertaining and allowing the appeal, he exercised the jurisdiction in complete violation of law and his order, therefore is totally unsustainable. The learned

single Judge had rightly quashed that order.

8. For the foregoing reasons we endorse) the view taken by the learned single Judge and dismiss this appeal with no order as to costs.