

(1993) 08 GAU CK 0033
In the Gauhati High Court
Case No : Second Appeal No. 1 (SH) of 1993

The Meghalaya State Electricity Board	APPELLANT
Vs	
Ambunath Choudhury Crans Operator GR. 1, (Mechanical Sub-Division) M.S.E.B. Sumer), The Assam State Electricity Board and B.C. Kalita Special Crane Operator M.S.E.B. Sumer	RESPONDENT

Date of Decision : 23-08-1993

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1994) 1 GLR 61

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : S.R. Sen and T. Yangi, for the Appellant; H. Ahmed and M. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Baruah, J.—This second appeal is directed against the Judgment and decree dated 19.12.92 passed by the District Judge, Shillong, in Title Civil Appeal No. 2 (H) 92. The Respondents had instituted a suit (TS No. 7 (H) 82) in the Court of the Munsiff, Shillong praying for a decree for declaration that the Appellant was entitled to be promoted to the rank of spl. Gr.-I Crane Operator and also for injunction directing the Defendant, namely, the Appellant to promote the Respondent to the rank of Spl. Gr-1. The Appellant - M.S.E.B. entered appearance and filed written statement. Issues were framed and after recording the evidence of the witnesses on behalf of both sides, the suit was decreed as prayed for, Against that Appellant preferred an appeal before the District Judge, Shillong (Title Civil) Appeal No. 2 (H) 92. However, the appeal was filed after expiry of the period of limitation. Along with the said appeal, a petition for condonation of delay was also filed by the Appellant explaining the delay. The District Judge admitted the appeal and issued notice. The 1st Respondent entered appearance in the said appeal and filed a petition stating, inter-alia, that the appeal was filed after expiry of the period of limitation without any sufficient

cause and, therefore, the appeal should be dismissed. On the objection filed by the 1st Respondent, the matter was taken up for hearing by the District Judge and the District Judge after hearing the parties, rejected the appeal on the ground of delay. Hence, the second appeal.

2. This appeal was admitted on 29.4.92 without formulating any substantial questions of law.

3. I have heard Mr. S.R. Sen, learned Counsel appearing for Appellants and also Smti. M. Sharma learned Counsel appearing on behalf of Respondent No. 1. Mr. Sen submits that the 1st appellate court most unreasonably dismissed the appeal holding that the appeal was barred by limitation. He further submits that the 1st appellate court having admitted the appeal, he had no jurisdiction to review the said order and, therefore, the impugned order is liable to be set aside. Besides, according to Mr. Sen, the 1st appellate Court dismissed the appeal by overlooking the law laid down by the Apex Court reported in Shamma Bhatt and Others Vs. T. Ramakrishna Bhatt, Therefore, the impugned order cannot be sustained in law and is liable to be set aside, Smti. Sharma on the other hand, vehemently supports the impugned order. She submits that the appeal having been filed after the expiry of limitation, the court can not condone the delay without hearing the other sides. The Court can come to the conclusion regarding existence of the sufficient causes only after hearing the other sides, and decide the matter on the basis of the submissions made by the parties. Smti, Sharma, further submits that the earlier order was passed without affording any opportunity to the other sides. The Court cannot take away the right of hearing of the other sides before admission of this appeal presented after the expiry of the time.

4. I have gone through the impugned Judgment and decree. On the basis of the rival contentions raised by the learned Counsel for the parties, it is to be seen whether the impugned order is sustainable in law, Admittedly the appeal was filed about 164 days after expiry of the period of limitation.

5. It is also admitted that at the time of admission, no opportunity was given to the Respondents to show as to why the prayer for condonation of delay should not be granted. On the expiry of the period of limitations, the other side acquires a right. Such right can be interfered with by the Court only when the Court is satisfied about the existence of sufficient cause for not filing the appeal in time. When the delay in filing an appeal is condoned without any notice to the Respondent, it is open to the Respondent to raise the question of limitation even at the time of final hearing of the appeal. It is well settled that where an appeal or application filed beyond time is admitted *ex parte*, after excusing delay, without notice to the opposite party, this is violative of the principles of natural justice and the latter is entitled, at the hearing to object to the admission and the Court can reopen the question and decide whether there is sufficient cause for condoning the delay.

6. In *Krishnasami Panikondar v. Ramasami Chettiar* reported in AIR 1917 PC 179, the Privy Council held thus:

...Yet in terms it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit term of an order like the present that though unqualified in expression it should be open to re-consideration at the instance of the party prejudicially affected and this view is sanctioned by the practice of the Courts in India.

7. In view of the observation of the Privy Council quoted above, I hold that the Respondent No. 1 had every right to challenge the sufficiency of the ground for condonation of delay.

8. Next point it is to be seen whether the appellate court was justified in passing the impugned order. The learned District Judge discussed the matter in this regard at length. He observed that the suit was decreed on 17.12.91, application for certified copies was made on 22.12.91, certified copies were ready on 25.3.92, delivery was given on 30.3.92. Hence, the appeal was filed after 164 days of delay, the ground mentioned in the petition is that during the relevant time, there was no regular Chairman in the Board competent to give sanction. Besides, due to other official procedures in scrutinising the case, the matter (sic) pending. Formal sanction was given only on 7th August, 1992 and immediately thereafter the appeal was filed.

9. After considering the submission of the parties, the appellate court came to the finding that the delay was not properly explained. He also found that every day's delay was not properly explained, in as much as the other official procedures in scrutinising the facts had not been made out by the Appellant. The learned District Judge, further observed that from January to March, 1992 Mr. J.M. Phira. IAS was the Chairman and from April to June, 1992 Mr. V. Kohli was the Chairman and from July onwards Mr. J.P. Singh held the post of Chairman of M.S.E.B., Shillong. Against these averments of the Respondent, no attempt was made to deny such averments by the Appellant. The learned District Judge observed that the Board during the said period was not without the Chairman either on regular or on temporary basis. During the said period something should have been done for obtaining sanction to prefer appeal and the officials of the Board ought to have been diligent enough to take prompt steps in obtaining sanction. Such prompt action was incumbent on the part of the Appellant to have the benefit of Section 5 of the Limitation Act. The Appellant or the Applicant, as the case may be has to show sufficient cause not only for not filing the appeal or the application within the period of limitation prescribed by law but also the delay made thereafter day to day. The Apex Court in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, observed as follows:

In construing Section 5 it is relevant to bear (sic) two important considerations.

The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

10. As per decision of Supreme Court in *Ramlal v. Rewa Coalfields Ltd.* (Supra) each day's delay after the period of limitation must be explained. This, however, does not mean that each day's delay must be conclusively established. This has been explained further in the latest decision of the Supreme Court.

11. The matter regarding condonation of delay is a discretionary power which rests with the court in which prayer for condonation is made. However, such discretion has to be exercised judicially and reasonably. Once the Court exercises discretion reasonably and judicially the High Court either by way of appeal or by revision or writ should not interfere with such order.

12. On perusal of the impugned order, it appears that the appellate court after considering all the aspects, came to the conclusion that the delay was not properly explained. I do not find that the approach of the 1st appellate court was wrong. I also do not find that the discretionary power was exercised by the 1st appellate court unreasonably and not judicially.

13. In view of the above, I do not find any merit in this appeal and the appeal is accordingly dismissed with costs.