

(2017) 01 MP CK 0033
In the Madhya Pradesh High Court
Case No : M.A. No. 1709 of 2009

Union of India

APPELLANT

Vs

National Fertilizers Ltd.

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Limitation Act, 1963 — Section 5
Railway Claims Tribunal Act, 1987 — Section 13, 13(1)(a)(i), 13(1)(A), 13(1)(B), 16, 17, 17(1), 17(1)(a), 17(1)(a)(b), 17(2), 18, 23
Railways Act, 1989 — Section 106

Citation : (2017) 3 MPLJ 557 : (2017) 1 ACC 678

Hon'ble Judges : Vijay Kumar Shukla, J.

Bench : Single Bench

Advocate : Shri N.S. Ruprah, Advocate, for the Appellant; Shri Pranay Verma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vijay Kumar Shukla, J.—This is an appeal filed by Union of India through General Manager South Eastern Railway, Kolkata under Section 23 of Railway Claims Tribunal Act, 1987 (hereinafter the same shall be referred as Act challenging the award dated 22.01.2009 passed by the Railway Claims Tribunal whereby the claim filed by the respondent under Section 16 of the Act against the appellant has been allowed and the appellant has been directed to pay an amount of Rs. 1,83,340/- as compensation along with at the rate of 6% p.a from the date of filing of the claim application till realization. The learned counsel for the appellant submitted that the claim filed by the appellant was miserably barred by limitation but the claim tribunal allowed the claim and the delay was condoned by separate order dated 11.08.2004.

2. Facts lie in a narrow compass are that the respondent dispatched consignment of one bag wagon containing 1030 bags of urea from Vijay to Tirodi under R.R. no.395768 dated 16.04.1992. The consignment was loaded in wagon no.NR8553 for safe carriage and delivery to the destination station. The aforesaid

consignment did not reach the destination station and was not delivered to the consignee at Tirodi. It was alleged that by order dated 13.01.1995 the appellant admitted that the wagon has been mis-dispatched to South Eastern Railway. Another letter was issued on 21.12.1998 admitting the said mis-dispatched consignment and it was informed that the same is lying at goods office of Eastern Railway, Chitpur. Regarding non-delivery of said wagon to destination station Tirodi, certificate was issued on 30.11.1995.

3. The respondent claimant had sent a notice under Section 106 of the Railway Act by registered post AD to the appellant on 08.07.1992 and to South Eastern Railway on 07.10.1992. The letters were acknowledged by the appellant but the claim was not paid, therefore, they filed the claim before the Railway Claims Tribunal at Bhopal.

4. The claimant filed an application under sub section 2 of Section 17 of the Act showing the sufficient cause that the claim could not be made within the prescribed period of three years as mentioned in Section 17(1)(a).

5. After hearing learned counsel for the appellant, the Tribunal was satisfied for the sufficient cause, the claim could not be filed within the period of limitation prescribed. The said delay was condoned by order dated 11.08.2004 after hearing the present appellant. The order dated 11.08.2004 which was passed separately is reproduced as under:

"11.08.2004 Present: Shri M. Bhatnagar, Adv. for the applicant.

P.O. for respondent.

Learned Advocate Shri M. Bhatnagar, for the applicant and Ld. P.O. Shri Awasthy, along with Shri Sisodiya, L.A. for the respondent argued at length on the application for condonation of delay. Respondent filed two documents as per list. Applicant has filed an application u/s 17(2) of RCT Act seeking condonation of delay of more than four years in filing of the claim application on the ground that the consignment was mis-routed due to negligence and misconduct on the part of the respondent and there were serious efforts to the settlement of claim by effecting the delivery of the consignment to the applicant. Applicant has drawn our attention on letter written by the C.C.O of the respondent on 21.12.1998 (Annexure A-12).

The matter was also referred to the High Power Committee as per directions of the Supreme Court within the period of limitation.

Due notices u/sec. 106 of Railways Act were also served. Matter remained under active consideration of the parties. The delay is not deliberate or intentional and deserves to be condoned in the interest of justice.

Learned P.O for respondent submitted that though the matter was referred to the high Power Committee but there was no bar in filing of the claim case and prayed for dismissal of the application as having no sufficient reason for condonation.

Ld. Advocate relief upon Apex Court's judgments in *Bootamal v. Union of India*, AIR 1962 SC 1761 and *N. Balkrishna v. M. Krishnamurthy* (1998) 7 SCC 123. In later case Hon'ble Court has held that primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

In this case respondent already filed w.s. In the facts and circumstances of the case we are of the opinion that the applicant had sufficient cause for not making the application within the prescribed period. Hence, we allow the application and the delay is hereby condoned."

6. The appellant while challenging the award, also submitted that the delay was wrongly condoned by the tribunal. Combating the aforesaid submissions, the learned counsel for the respondent/claimant submits that the present appeal is against the award dated 22.01.2009 by which his claim has been allowed. The issue of condonation of delay was separately decided by the tribunal by the order which has been referred above. The said order was not challenged and therefore the validity of the said order cannot be examined. He submits that an application under sub section 2 of Section 17 was filed before the tribunal. The said application was allowed after hearing learned counsel for the appellant and the said order was not challenged and therefore now the appellant is estopped on the principle of estoppel and waiver.

7. The learned counsel for the appellant submits that the order passed by the tribunal condoning the delay could not have been challenged under Section 23 of the Act and he further submits that the order for condonation of delay has merged in the final award and therefore he can challenge the order of condonation of delay in filing the claim.

8. To appreciate the rival contentions of the parties, it is relevant to advert the provisions of Section 17 of the Act, the same is reproduced as under:

Limitation- (1) The Claims Tribunal shall not admit an application for any claim.

(a) under sub-clause (I) of clause (a) of sub-section (1) of Section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway;

(b) under sub-clause (ii) of clause (a) of sub-section (1) [or, as the case may be, sub-section (1-A) of Section 13 unless the application is made within one year of occurrence of the accident;

(c) under clause (b) of sub-section (1) of Section 13 unless the application is made within three years from the date on which the fare of freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (I) of clause

(a) of sub-section (1) of Section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under Section 78-B of the Railways Act.

(2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (1) if the applicant satisfied the Claims Tribunal that he had sufficient cause for not making the application within such period.

9. From reading the Section 17 of the Act, it engrafts the provisions that the Claims Tribunal would not admit an application for any claim in the very beginning of Section and thereafter the period of limitation is prescribed for different nature of claims as mentioned under Section 13 (1)(a)(i) and also under Section 13(1-A) and also for Section 13(1-B). A proviso is also added to the provisions of Section 17(1) that no application for any claim referred to in said clause (1) of clause (a) of sub section (1) of Section 13 shall be preferred to the claims tribunal until the expiration of three months next after the date of which the intimation of the claim has been preferred under Section 78-B of the Railways Act. The present case is covered under the provision of Section 13(1)(a) (i) which is for compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to the railway administration for carriage by railway. Thus, any claim for compensation either of the provisions under Sections 13 will not be admitted for further consideration by the claims tribunal until the claim is preferred limitation prescribed under Section 17(1)(a)(b) and (c) and further a claim under sub clause (1) of Section 13 shall be preferred only after the expiration of three months next after the date on which the intimation of the claim had been preferred under Section 78-B of the Railways Act. The sub section 2 of Section 17 has carved out an exception to the sub section (1) of Section 17. It reads that an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period. Thus a claim can be admitted by the tribunal even after the period of prescribed limitation under Section 17(1)(a)(b) and (c) if the claimants satisfies the tribunal that he had sufficient cause for not making the application within such period, the word "sufficient cause" has been used which is *pari-materia* with Section 5 of the Indian Limitation Act.

10. In the present case, before admitting the claim, the Tribunal issued notices to the appellant and after affording an opportunity of hearing, the delay was condoned. As the Tribunal recorded a finding, there was sufficient cause for not making the claim within the period of limitation. After allowing the application for condonation of delay, the claim was admitted by the tribunal and thereafter the issues were framed and the claim was tried. Thus, before admission of the claim, the delay was condoned and thereafter the case was proceeded for recording of evidence and adjudication. Thus the proceedings are in two parts, one condoning the delay before admission of claim and thereafter trial of claim. If the claim

would have been dismissed at first stage, then the trial would not have taken place. In the present case, the tribunal first heard the parties on the issue of limitation and decided the said issue separately before proceeding for trial on merit.

11. The word "admit" used in Section 17 shows the intention of the legislature that before the trial of suit the tribunal has to consider the "sufficient cause" for delay and thereafter if the delay is condoned then only further trial of the claim is proceeded otherwise the claim shall be dismissed at threshold at admission stage itself. The provisions of CPC has been made applicable to regulate the procedure for trial of the claim case as mentioned under Section 18 of the Act. In the present case, since the delay was condoned by separate order, there was no question of framing issue regarding limitation by the Tribunal and the claim was decided on merit. The appellant had chosen not to challenge the order passed by the tribunal regarding condoning the delay. The conduct of the appellant amounts to waiver of their right to challenge the said order. There is no merit in the contention of the appellant that there was no remedy available with them to challenge the said order as appeal is not provided against the interlocutory order as revisional jurisdiction or supervisory jurisdiction could have been invoked by the appellant. Further from the proceedings there is nothing on record to show that at any stage of trial the appellant insisted to consider the issue of limitation as one of the issues for trial. The said conduct of the appellant amounts to waiver and they are estopped from challenging the order because of their conduct as they accepted the order passed by the Tribunal. In the present appeal only award allowing the claim of respondent for compensation is challenged. There is no prayer or relief challenging the order condoning the delay. During the course of argument, the counsel for the appellant make an endeavour to question the validity of said order which was passed separately before trial of the claim.

12. In the present case, on minute examination of provisions of Section 16 and 17, it is crystal-clear that the proceedings under Section 16 and 17(2) are in two parts, first is admission of the claim and other part is trial of claim after admitting the claim. For the first part, for admitting any claim, the claimant must satisfy the period of limitation as provided under Section 17(1)(a)(b)(c) or under sub-section 2 of Section 17 where the tribunal is satisfied that the claimant had sufficient cause for not making the application within the prescribed period.

13. The learned counsel for the appellant contended that in the light of the judgment passed in the case of *Birla Cement Works v. G.M. Western Railways and another* (1995) 2 SCC 493, the order passed by the tribunal is illegal. The facts of the said case are different and the said judgment would be of no help to the appellant in the present case. Here it is not the question whether admission or acknowledgment of lapse by the respondent railway would be starting point for computation of limitation or not.

14. Next argument of the appellant that the doctrine of merger would apply and

the order passed by the tribunal condoning the delay in filing the claim has merged in the final award has nothing merit. This is not a case where the higher authority has passed the order in the appeal or in the revisional jurisdiction, and the order challenged has been affirmed or modified and therefore the order has merged. This view is fortified by the law laid down by the apex Court in the case of Commissioner of Central Excise, Delhi v. Pearl Drinks Limited (2010) 11 SCC 153 where the apex Court has held that :

13. The doctrine of merger has its origin in common law. It has its application not only in the realm of judicial orders but also in the realm of estates. In its application to orders passed by the judicial and the quasi-judicial courts and authorities it implies that the order passed by a lower authority would lose its finality and efficacy in favour of an order passed by a higher authority before whom correctness of such an order may have been assailed in appeal or revision. The doctrine applies regardless of whether the higher court or authority affirms or modifies the order passed by the lower court or authority.

14. The juristic basis of the doctrine has been examined by this Court in a long line of decisions. One of the earliest of the said decisions was rendered in CIT v. Amritlal Bhogilal & Co. The Court in that case declared that as a result of the confirmation or affirmation of the decision of the Tribunal by the appellate authority, the original decision merges in the appellate decision whereupon it is only the appellate decision which subsists and is operative and capable of enforcement.

15. In the present case, the order passed by the tribunal regarding the contention of delay attained the finality as there is no decision by the appellate authority or the revisional authority, regarding affirmation or modification of the order passed by the tribunal. The apex Court in the case of Kunhayammad and others v. State of Kerala and another (2000) 6 SCC 359 held that the dismissal of SLP by non speaking order by the apex Court does not mean that the judgment passed by the High Court has been approved on merit. The apex Court held that the special leave petition and decision on appeal after grant of special leave are distinct proceedings.

16. In the present case also the proceedings for condoning the delay before admitting the case under sub-section 2 of Section 17 are of independent nature and thereafter the claim is tried only after allowing the condonation of delay and admitted the case.

17. After an elaborate and extensive discussion of the facts and enunciation of law on the said field, I am of the considered view that the validity of the order condoning the delay which was not challenged by the appellants would not merge in the final award as the doctrine of merger would not apply in the present case and the appellants are estopped from challenging the said order on the anvil of the doctrine of waiver and estoppel. Specially where there is no relief or prayer to challenge the order of condonation of delay even in appeal. So far

the compensation awarded by the tribunal is concerned, the learned counsel for the appellant fairly submitted that the compensation cannot be held to be unfair or unjust and there was no serious challenge to the compensation awarded by the tribunal. Even otherwise in the backdrop of facts of the case, the compensation is fair and just.

18. I am of the considered view that there is no illegality in the impugned award granting compensation to the respondent in view of the facts and law discussed herein above.

19. Accordingly, the appeal fails and is hereby dismissed.