

(1989) 08 KAR CK 0025
In the Karnataka High Court
Case No : W.P. No. 14988/1984

Venkataramana Ganapayya Bhat

APPELLANT

Vs

Karnataka Appellate Tribunal and Another

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 119
Karnataka Co-operative Societies Rules, 1960 — Rule 31(4)
Limitation Act, 1963 — Section 12

Citation : (1989) 2 KarLJ 537

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

M.P. Chandrakantharaj Urs, J.-Plaintiff-first respondent, the Kumta Cooperative Arecanut Sales Society Ltd., Kumta, raised a dispute in Arbitration Case No. B/ DDS. 48/79-80 before the Arbitrator-Sri R.V. Pandit of Kumta, seeking a money decree against the defendant-writ petitioner in regard to certain transactions he had with the Co-operative Society of which he was a member.

2. For purpose of this Writ Petition it suffices to state that the matter was contested, elaborate pleadings were put in, issues were joined and evidence was led by both parties. Thereafter arguments were heard, which resulted in the award dated 14-5-1980. Aggrieved by that award petitioner preferred an appeal in Appeal No. 917/80 before the Karnataka Appellate Tribunal. That appeal was accompanied by an application under Section 5 of the Limitation Act read with the Regulations of the Tribunal in that behalf to condone the delay if any in filing the appeal. In disposing of that application the Tribunal declined to condone the delay inter alia on the ground that the petitioner had contested the claim of the first respondent-Co-operative Society; that he had engaged a Counsel and participated in the proceedings and deliberately remained absent on the date of pronouncement of the order having known the date on which the order would be passed and therefore he was entitled to claim the benefit of exclusion of the time occupied in obtaining the certified copy of the order of the Arbitrator. That finding is assailed in this Writ Petition inter alia on the ground as urged by Mr. K.I.

Bhatta, learned counsel for the petitioner, that the Tribunal erred in coming to the conclusion that his absence was deliberate when the judgment was pronounced; that the Tribunal had no material before it to come to such a conclusion while the intimation of having passed order by the Arbitrator as at Annexure-C to the Writ Petition clearly points out that he was not present and therefore the intimation was being sent to him and that the Tribunal completely ignored Section 12 of the Limitation Act which in terms of Section 119 of the Karnataka Co-operative Societies Act (hereinafter referred to as the Act) is made applicable to the filing of all appeals arising under the Act.

3. The first of the contentions urged, *ex facie*, must be accepted by this Court as well founded. Annexure A, a true copy of the Arbitrator's order clearly sets out in writing that the judgment was dictated to the Stenographer, transcription of the same made and pronounced in open Court in the presence of parties. Contents of Annexure-C, the notice, purporting to be notice issued in terms of Clause (a) of sub-rule (7) of Rule 31 of the Karnataka Co-operative Societies Rules (hereinafter referred to as the Rules) clearly contradict that position. In fact the Tribunal in paragraph 5 of its judgment has alluded to Annexure- C, the notice of the Award.

Therefore the worst that may be said against the petitioner who has suffered the award is that by his absence deliberate or otherwise date of knowledge of making of the award may be fixed only on the date on which he received the notice which he claims to be on 22-5-1980. There is nothing in the records to disputes that assertion made by the petitioner. Soon thereafter he has made an application on 29-5-1980 for grant of certified copy of the award. That may not be disputed because Annexure-D dated 18-6-1980, issued by the Joint Registrar of Co-operative Societies, Belgaum Division, Belgaum, with whom apparently the Arbitrator's award was registered in accordance with the provisions contained in Clause (a) of sub-Rule 7 of Rule 31 of the Rules refers to an application made by the petitioner on 29-5-1980 under the heading "Reference". Therefore an application for grant of copy was made on 29-5-1980 need not be disputed and the Tribunal has not taken notice of that aspect of the case. The contents of Annexure-D also indicate that certified copy of the award shall not be granted gratis, but only on payment of certain fees which is indicated in the said communication dated 18-6-1980 and the Joint Registrar has called upon the petitioner to deposit that amount in a Treasury under the specific Head hearing No. "098 Co-operation, 2-other receipts, copying fees" and send the original challan to the office for taking further action in the matter. In other words, if there was proper application of the mind of the Tribunal to Annexure-D, it would have seen that the application was entertained on or after 29-5-1980 and further action was contemplated only on receipt of the challan. Annexure-E is a true copy of the letter addressed by the Joint Registrar bearing the dated 2-8-1980 enclosing the certified copy of the judgment, which the petitioner claims was received by him on 6-8-1980. Strangely, in Annexure-E, the letter to which the certified copy of the judgment of the Arbitrator was attached, reference to the

application of the petitioner is said to be dated 27-6-1980, which is not the reference made to the application dated 29-5-1980 found in Annexure-D. Thus, for whatever reason the Joint Registrar considered the application to have been made on 27-6-1980 and that is the date shown also on the certified copy though no such application on that date was made by the petitioner. The Tribunal has gone by the date shown on the certified copy of the order and therefore they found that the appeal was beyond time, being beyond 60 days prescribed under Section 105 of the Act for preferring appeal to the Tribunal against the judgment of the Arbitrator.

4. Lastly, it has not considered the effect of Section 12 of the Limitation Act read with Section 119 of the Act. The question of limitation arising under Rule 31 of the Rules has been the subject matter of decision in more than one case by this Court. That question of limitation may arise in more than one situation contemplated if Rule 31 is read in its entirety. In the case of Siddagangaiah G.S. v The Karnataka Appellate Tribunal and Others (1987(1) Karnataka Law Journal P.150) I had occasion to consider the question of limitation arising under Sub-rule 4(1) of Rule 31 of the Rules and came to the conclusion in the light of the decided cases that if petitioner had knowledge of the award, question of exclusion of period occupied by certified copy in computing the period of limitation would not arise. That conclusion apparently was reached by me on the facts of that case having regard to the fact that application for certified copy was made long after the period of limitation was over and that the petitioner had knowledge of the award at an earlier date was not in dispute.

In the case of Doddanagouda K.M. v The Rythara Seva Sahakara Sangha Niyamitha & Others (1988(1) Karnataka Law Journal, p.510) a learned single Judge of this Court has come to the conclusion that knowledge of the fact of the award being made is not sufficient, but in order to prefer an appeal the contents of the award should also be known to the party preferring the appeal and therefore it is only when certified copy of the order is obtained the knowledge of the award in the real sense is attributable to the person who is appealing against that award. Therefore, the well established principle of law is that when a person wants to question the legality and correctness of a judgment or award he must have knowledge of the contents so that he may urge proper and suitable grounds pointing out the errors in the judgment or the award. Therefore, mere communication as at Annexure C would not be sufficient, as held by the learned single Judge in the aforementioned decision, but contents of the award also should be known. That principle read with Section 12 of the Limitation Act and Section 109 of the Act makes it imperative that without the certified copy an appeal cannot be preferred and as such period occupied in obtaining certified copy should be excluded in computing the period of limitation. On that there can be no doubt.

5. The Tribunal has failed to examine these aspects of the case and proceeded to dispose of the application for condonation of delay on pure imagination that on

account of his deliberate absence petitioner was not entitled to the relief of condonation of delay. The absence relatable is the date on which the Arbitrator had set down for the pronouncement of the award or judgment.

6. In other words, all the three contentions advanced on behalf of the petitioner are liable to be accepted by this Court as well taken and the impugned order of the Tribunal is set aside and the matter is remanded back to the Tribunal to apply afresh its mind in the light of the undisputed facts and the documents produced by parties to which reference has been made in the course of this order.

7. In the result, Writ Petition is allowed in terms above. Rule issued is made absolute.

In the circumstances, there will be no order as to costs.

Writ Petition allowed.