

(1971) 11 KAR CK 0007

In the Karnataka High Court

Case No : Misc. First Appeal No's. 604 and 605 of 1971

V.V. Kudva and Another

APPELLANT

Vs

Employees State Insurance Corporation, Bangalore

RESPONDENT

Date of Decision : 09-11-1971

Acts Referred:

Employees State Insurance Act, 1948 — Section 82

Citation : AIR 1972 Kar 204 : (1972) 1 MysLJ 360

Hon'ble Judges : K. Bhimiah, J;D.M. Chandrashekar, J

Bench : Division Bench

Advocate : H.G. Hande, for the Appellant; M.C. Ranganna, for the Respondent

Judgement

1. These appeals u/s 82 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act) are from the common order dated 2-7-1969, of the Employees' State Insurance Court at Mangalore (hereinafter referred to as the E. S. I. Court) in Applications (ESI) Nos. 6 and 9 of 1968.

2. The period of limitation for preferring an appeal u/s 82 of the Act, is 60 days. There is a delay of 670 days in filing these appeals. The appellants who are common in both these appeals, have made an application. I. A.I. In each of these appeals praying for condonation of such delay. The provisions of Section 5 of the Limitation Act are applicable to appeals u/s 82 of the Act.

3. In support of the applications for condonation of delay, the Counsel who appeared for the appellants in the E. S. I. Court, has filed affidavits in which he has stated, inter alia, thus: In the light of the decisions which held the field at the time the E. S. I. Court rendered its decision, he bona fide believed that there was not much chance of success in appeal and that accordingly advised the appellants not to file the appeals. After he noticed the decision of the Supreme Court in the The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan, , he advised the appellant to file the appeals as they might have fair chance of success in view of that decision of the Supreme Court. Accordingly

the appellants have filed these appeals.

4. The applications for condonation of delay in preferring these appeals, have been opposed by the respondent, the Employees' State Insurance Corporation. Mr. H. G. Hande, learned Counsel for the appellants, contended that a subsequent enunciation of law by the Supreme Court, would be a sufficient excuse for the delay in preferring an appeal and that, at any rate, a mistaken view by the appellant or his counsel as to whether a decision of a Court is a fit case for appeal would constitute a sufficient ground for condoning the delay in filing the appeal.

5. If a new ruling, whether of the Supreme Court or of the High Court, is regarded as constituting sufficient excuse for filing an appeal beyond the prescribed period of limitation, then there should be no difference in principle in entertaining an appeal a year or fifty years after the expiry of the period of limitation. If a judgment of a Court is re-opened in appeal after such a long time, there would be no finality to decisions of Courts and the rights and titles of many persons would be uncertain and insecure.

6. However, Mr. Hande sought to derive support from the following observations of the Supreme Court in *Sitaram Ramacharan v. N. N. Nagrashana* AIR 1969 SC 260

"He, however, argued that the said finding (that no satisfactory explanation has been given for the delay in making the applications) would not affect the final decision because, according to him, once it is held that ignorance of law can be a sufficient cause, then the period until 2-5-1952, would be covered by the appellant's ignorance about the true scope and effect of the provisions of Section 70 of the Bombay Shops and Establishments Act. This position may be conceded."

6. A close reading of the above judgment of the Supreme Court shows that the Supreme Court left open question whether ignorance of law or mistake of law can be a sufficient cause for exercising the discretion of the court u/s 5 of the Limitation Act. Gajendragadkar, J. (as he then was), who spoke for the Court, said thus at page 263 :

"We do not propose to deal with this argument because, as we will presently point out, we have come to the conclusion that the appellants would fail if we were to uphold the present contention."

7. Hence, the above decision of the Supreme Court cannot be of any assistance to Mr. Hande.

8. Mr. Hande next relied on the following observations of Hidayatullah, C. J. in his leading majority judgment in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*,

"I agree with my brethren Bachawat and Mitter, JJ. that there is no question here of a mistake of law entitling the petitioner to invoke the analogy of the Article in

the Limitation Act Not having done so and having abandoned his own litigation years ago, I do not think that this Court should apply the analogy of the article in the Limitation Act and give him the relief now."

9. We are unable to understand the above observations as laying down that under the Limitation Act. a mistake of law is a ground for condoning the delay in preferring an appeal. On the other hand, the following observations in the same para of the judgment of his Lordship, give a contrary indication :

"Everybody is presumed to know the law In any event, having set the machinery of law in motion he cannot abandon it to resume it after a number of years, because another person more adventurous than he in his turn got the statute declared unconstitutional, and got a favourable decision."

10. Reliance was also placed by Mr. Hande on the following observations of Hidayatullah. C. J. who spoke for the Court in *Mata Din Vs. A. Narayanan*, :

"The law is settled that mistake of Counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground."

11. We do not see how the above observations can be of any assistance to Mr. Hande when his Lordship has clearly stated that there is no general proposition that mistake of counsel itself is always a sufficient ground for condonation of delay.

12. None of the decisions relied on by Mr. Hande supports his contention that a litigant who has acquiesced in the judgment of a Court by not preferring an appeal within the period of limitation, can wake up and prefer an appeal after a subsequent ruling of the Supreme Court or the High Court which he considers as being favourable to him. Nor can the advice of his counsel that his case is not a fit one for appeal, which advice may turn out to be a mistaken one in the light of a subsequent ruling of the Supreme Court or the High Court, be regarded as a sufficient ground for condoning such delay.

13. We do not see any sufficient ground to condone the delay in preferring these appeals.

14. In the result, I. A. I. is dismissed in each of these appeals and consequently, the appeals are also dismissed.