IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10173 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 10175 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

==

INDIAN HUME PIPE COMPANY LTD
Versus
GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION & 1 other(s)

==

Appearance:
MR GT DAYANI(271) for the Petitioner(s) No. 1
MR CHINMAY M GANDHI(3979) for the Respondent(s) No. 1
MR MB GANDHI(326) for the Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2

==

CORAM:**HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 06/04/2022

ORAL JUDGMENT

1. *Rule*.

2. These petitions, under Article 227 of the Constitution of

Downloaded on : Sun Apr 10 22:42:34 IST 2022

India, have been filed by the petitioner against a common judgment and order dated 18.04.2018 passed *vide* Exh. 22 in Misc. Civil Application Nos. 172 and 178 of 2016 by the learned Principal Judge, City Civil Court, Ahmedabad. By the said applications, the respondent No. 1 herein had prayed for to restore Misc. Civil Application Nos. 79 and 78 of 2004, which were dismissed for default by orders dated 12.02.2013.

3. Heard, learned advocate Mr. G. T. Dayani for the petitioner and learned advocate Mr. Chinmay Gandhi for the respondent No. 1. Notice is duly served upon the respondent No. 2.

4. The learned advocate for the petitioner, with all vehemence at his command, submitted that the impugned common judgment and order passed by the learned City Civil Judge is illegal, perverse and arbitrary inasmuch as the restoration applications in question were filed beyond time limit and on totally misstatement and false allegations. He submitted that only because the respondent No. 1 is a government undertaking, it does not deserve undue leverage more particularly, when there was inordinate delay and false statements.

4.1 The learned advocate for the petitioner further submitted that the learned trial Court ought to have considered the fact that the petitioner, through arbitration process, got the award in the year 2003 and faced multiple litigation, however, still the petitioner has not availed the fruits of such litigation. He submitted that the petitioner company had successfully completed the work and got the award, however, due to such litigation, the petitioner is not receiving the legitimate dues and the amount is, now, ordered to be invested in fixed deposit by the impugned order.

Downloaded on : Sun Apr 10 22:42:34 IST 2022

4.2 Moreover, the learned advocate for the petitioner submitted that principle of natural justice and substantial justice, are for whom who comes with clean hands, which, in the case of the respondent No. 1 is not there. He submitted that as per settled principles of law, *mala fides*, negligence, inordinate delay, insufficient grounds and unsupported statements do play important role in exercising the discretion and it may be refused, irrespective of the fact that the party is a government authority, for want of sufficient cause and/or for any other cause mentioned above. The learned advocate for the petitioner submitted that after dismissal, the petitioner filed the execution proceedings and the respondent No. 1 was duly served and accordingly, it cannot be said that the respondent No. 1 was not aware and therefore, the learned trial Judge ought to have appreciated the said fact, but is not taken into account.

4.3 Making such submissions, it is urged that these petitions may be allowed by setting aside the impugned judgment and order.

4.4 In support, the learned advocate for the petitioner has relied upon following decisions:

i) Estate Officer, Haryana Urban Development Authority and Another v. Gopi Chand Atreja, AIR 2019 SC 1423;

ii) Khodiyar Rolling Mill v. Paschim Gujarat Vij Company Ltd., 2014 (0) AIJEL-HC 231645;

iii) Subham Corporation Thro Proprietor Kreena Sureshbhai v. Gujarat Siddhi Cement Ltd., 2013 (0) GLHEL-HC 230219;

iv) Prahladbhai Shivabhai Patel v. Bhanuben Kantibhai Patel, 2014 (4) GLR 3219;

Downloaded on : Sun Apr 10 22:42:34 IST 2022

v) Patel Shankarbhai Virabhai v. Patel Narayanbhai Ambalal, 2011 (0) GLHEL-HC 226069;

vi) Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and Another, 2010 (4) GLR 3066 SC;

5. *Per contra*, learned advocate Mr. Chinmay Gandhi for the respondent No. 1, while supporting the impugned judgment and order, heavily resisted the petitions and submitted that no error has been committed by the learned City Civil Judge, which requires interference at the hands of this Court. It is submitted that learned advocate representing the respondent No. 1 before the learned Court below did not inform about the dismissal of the applications challenging the award in the year 2013 and the respondent No. 1, who was genuinely pursuing the cause, through an advocate, was not knowing about such outcome and accordingly, it is default on the part of the learned advocate representing the respondent No. 1 before the learned trial Court. He submitted that eventually, immediately on coming to know, the respondent No. 1 filed the restoration applications, which came to be allowed by the learned City Civil Judge. He submitted that as a condition, precedent full decretal amount was deposited by the respondent No. 1.

5.1 The learned advocate for the respondent No. 1 submitted that the learned trial Court has rightly come to the conclusion that ordinarily, a litigant does not stand to benefit by lodging a late appeal or by remaining absent. Not only that, but substantial justice is required to be rendered to the parties and not to dismiss the matter on technical considerations. Accordingly, it is requested that, these petitions, being bereft of any merits, deserve to be dismissed.

Downloaded on : Sun Apr 10 22:42:34 IST 2022

5.2 In support, the learned advocate for the respondent No. 1 has relied upon following decisions:

i) Bhikhabhai Rasulbhai Chothiya v. Decd. Gandhi Gulabchand Chandulal, 2009 (0) GLHEL-HC 222047;

ii) Shah Bhikhabhai Chimanlal and Another v. Shakariben Babubhai Prajapati, 2007 (3) GLH 625;

iii) Dilipsinh Gajubha Jadeja v. Kana Dida Bharwad, 2016 (0) AIJEL-HC 235581;

iv) Khambhat Nagarpalika Through Chief Officer Jitendrakumar Govindbhai Dabhi v. Babubhai Dhanaji Marwadi, 2021-GLH-3-105;

v) Manojkumar Shantilal Jain v. Navneetkumar Lilachand Patel, 2015 (0) AIJEL-HC 233426.

6. Regard being had to the submissions canvassed and considering the material available on record, so also, considering the impugned judgment and order passed by the learned City Civil Judge, it appears that the learned Court below restored the Misc. Civil Application Nos. 79 and 78 of 2004, which were filed by the respondent No. 1 herein challenging the award dated 21.11.2003 of the sole arbitrator, which were dismissed for default by orders dated 12.02.2013. Against which, applications for restoration came to be filed, which came to be allowed by the impugned judgment and order dated 18.04.2018 and hence, the dissatisfied petitioner is before this Court with these petitions.

6.1 Facts as emerge from the record and necessary for determination of these petitions, are as under:

i) in an Arbitration Petition No. 36 of 1998 filed before this Court, Sole Arbitrator was appointed and on

Downloaded on : Sun Apr 10 22:42:34 IST 2022

21.11.2003 the respondent No. 2 herein, the sole Arbitrator passed the award;

ii) the said award was challenged by the respondent No. 1 herein by filing Misc. Civil Application Nos. 79 and 78 of 2004 respectively;

iii) the said applications came to be dismissed for default by the orders dated 12.02.2013;

iv) in 2014, the petitioner filed Execution Petition Nos. 75 and 74 of 2014;

v) indisputably, process issued in the said execution petitions, was served upon the respondent No. 1 on 20.08.2015 and the respondent No. 1 also appeared through an advocate;

vi) further, Distress Warrant also came to be issued against the respondent No. 1 on 08.02.2016;

vii) while service on 15.03.2016, the concerned officer of the respondent No. 1 gave an undertaking that the matter would be settled within 25 days and payment would be made;

viii) however, on 13.04.2016, the respondent No. 1 filed the restoration applications being Misc. Civil Application Nos. 172 and 178 of 2016;

ix) the respondent No. 1 also filed a Civil Revision

Downloaded on : Sun Apr 10 22:42:34 IST 2022

Application Nos. 315 and 314 of 2016 before this Court on 16.04.2016, which came to be withdrawn unconditionally in view of pendency of the restoration applications by virtue of the orders dated 17.04.2017;

x) in the said civil revision application, delay condonation applications were also filed, praying for to condone the delay of 1074 days;

x) on 18.04.2018, the said restoration applications came to be allowed.

6.2 Now, if the prescribed period of limitation for filing the restoration application is taken into consideration, the relevant provision of the Limitation Act, 1963 read as under:

122. To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of dismissal

6.3 Thus, the prescribed period of limitation for filing a restoration application is 30 days from the date of dismissal. It is not in dispute that the respondent No. 1 was served with the notice of the execution petitions on 20.08.2015 and also appeared through an advocate. Thereafter, the said execution petitions also came to be adjourned from time to time. Meaning thereby, the respondent No. 1 was in very well know of the dismissal order dated 12.02.2013, at least on 20.08.2015. Moreover, the applications in questions came to be filed on

Downloaded on : Sun Apr 10 22:42:34 IST 2022

13.04.2016. In the *interregnum*, the respondent No. 1, on service of Distress Warrant on 15.03.2016, also assured to settle the matter and to make payment. Thus, from the above, it is abundantly clear that there was delay in filing the restoration applications, however, record reveals neither any delay condonation application is filed nor is there any prayer to condone the delay appear to have been made in the said restoration applications. On the contrary, it is averred in the said applications that, "*present petitioner has come to know about the dismissal of the matter few days back i.e. on 15/3/16 when bailiff of the Gandhinagar court had come for the attachment of the properties of present petitioner*", which is against facts and record of the case. As referred to herein above, the respondent No. 1 was in very well know of the dismissal on 20.08.2015, however, the learned trial Judge appears to have failed to take into consideration the said aspect of the matter.

6.4 The Court may hasten to add that the respondent No. 1, after filing of the aforesaid restoration applications on 13.04.2016, also filed the Civil Revision Application (Stamp Number) Nos. 315 and 314 of 2016, wherein, on 16.04.2016, Civil Application Nos. 4837 and 4835 of 2016 for delay condonation were filed for condoning the delay of 1074 days caused in presenting the said civil revision applications against the order dated 12.02.2013 and those civil revision applications came to be withdrawn unconditionally, with a view to pursue the restoration applications by virtue of an order dated 17.04.2017 passed in Civil Revision Application (Stamp Number) No. 315 and 314 of 2016.

6.5 Further, a perusal of the impugned judgment and order

Downloaded on : Sun Apr 10 22:42:34 IST 2022

reveals that, only on the ground that the respondent No. 1 – applicant therein, being a government undertaking, without there being any prayer to condone the delay in the restoration applications, the learned City Civil Judge condone the delay and allowed the applications. At this juncture, paragraphs 18 and 6 of the impugned judgment and order are relevant and hence, reproduced hereunder:

> "*6)* ***It is submitted by learned Advocate Shri S. B. Keshwani****, that it is settled proposition of law that a litigant cannot be allowed to suffer on account of negligence of the Advocate and in the present case, the Advocate had not informed the present applicant as to the listing of his matter and therefore, in absence of the applicant as well as his Advocate, the original proceedings came to be dismissed by the Court, and when it came to the knowledge of the applicant that the proceedings were ordered to stand dismissed for default of the applicant,* ***he approached the Court for restoration thereof, and that too, within the period of limitation****, and in such circumstances, the present application are required to be allowed, and the original proceedings being CMAs Nos. 79/2004 and 78/2004 are required to be restored to file.*"
>
> *xxx*
>
> *18) If the judgment cited by Shri Keshwani, is perused, it also shows that the words "sufficient cause" receives a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the applicant. In such circumstances, when the applicant has not initiated the legal remedy within the stipulated time and from the record it seems that the applicant is negligent and has remained inactive, these applications deservedly require to be dismissed and no delay can be condoned.* ***However, the applicant is a Government Undertaking, and in such circumstances, the issue involved in the matter is regarding the public money, and therefore, considering the aspect that the procedure which is adopted by the Government for condonation of delay, takes time, in such special circumstances, in the opinion of this Court, if lenient view is taken and***

Downloaded on : Sun Apr 10 22:42:34 IST 2022

<u>delay is ordered to be condoned, it can also be considered just and proper</u>.

6.6 Thus, on one hand, it is the case of the respondent No. 1 that the respondent No. 1 approached the Court within the period of limitation and as said earlier, neither any application for condonation of delay nor any prayer *qua* that had been made in the restoration applications, and though, the learned trial Judge was not convinced on the aspect of the delay, as can be culled out from paragraph 18 referred to herein above, the said aspect is considered against the facts, averments and the settled law by the learned City Civil Judge.

6.7 Further, there appears contradictions in the version of the respondent No. 1 inasmuch as, though the respondent No. 1 was served with the notice on 20.08.2015, it stated to have knowledge of dismissal only on 15.03.2016 when Distress Warrant came to be issued. Further, the respondent No. 1 not only filed the restoration applications before the learned trial Court concerned but also had filed the civil revision applications before this Court wherein, in delay condonation application, prayer was made to condone the delay of 1074 days. Accordingly, the Court finds substance in the submissions advanced by the learned advocate for the petitioner and in the considered opinion of the Court, the petitions merit favourable consideration and to remand back the matter for *de novo* consideration of the restoration applications.

6.8 It is also trite that in delay application also, sufficient cause is the paramount consideration and if sufficient cause is shown, the Court should generally condone the delay. However, if the sufficient cause is imbibed with the laxity and *mala fides* on the

Downloaded on : Sun Apr 10 22:42:34 IST 2022

part of the delayer despite due knowledge, then Court should restrain itself from encouraging such practice and condone the delay.

6.9 So far as the decisions relied upon by the learned advocate for the respondent No. 1, the Court deems it proper not to discuss the same in view of the fact that the same are mostly related to delay condonation and sufficient cause.

6.10 The Court is conscious of the fact that the petition is filed under Article 227 of the Constitution of India and the scope for interference is very scant. However, according to the ratio in ***Waryam Singh and Another v. Amarnath and Another [AIR 1954 SC 215]***, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'; in order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them and; when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In the case on hand, there appears such an eventuality.

7. For the forgoing reasons, these petitions suceed and are accordingly allowed in part. The impugned common judgment and order dated 18.04.2018 passed *vide* Exh. 22 in Misc. Civil Application Nos. 172 and 178 of 2016 by the learned Principal Judge, City Civil Court, Ahmedabad, is hereby set aside. The matters are remanded back to the trial Court concerned to decide

Downloaded on : Sun Apr 10 22:42:34 IST 2022

the same afresh, after affording an opportunity of hearing to both the sides, in accordance with law and on merits. Endevour shall be made for expeditious disposal, however, not later than three months from the date of receipt of this judgment and order. The amount deposited by the respondent No. 1 shall be retained as per the order dated 18.04.2018. Rule is made absolute accordingly. No order as to costs.

[A. C. Joshi, J.]

hiren

Downloaded on : Sun Apr 10 22:42:34 IST 2022