

A.F.R.

Neutral Citation No. - 2023:AHC-LKO:54049

Court No. - 8

Case :- FIRST APPEAL FROM ORDER No. - 236 of 2002

Appellant :- M/S Krishak Bharti Co-Operative Ltd.Kribhco Surat Gujarat

Respondent :- Union Of India Thru G.M. Northern Eastern Railway
Gorakhpur

Counsel for Appellant :- Ashok Kumar Bhatnagar

Counsel for Respondent :- A. Srivastava, Anil Srivastava, J.P. Maurya

Hon'ble Ajay Bhanot, J.

Heard Shri Ashok Kumar Bhatnagar, learned counsel for the appellant and Shri Varun Pandey, learned counsel for the respondent-Union of India.

The instant first appeal from order arises out of a judgement and order dated 09.02.2000 as well as 21.01.2002 under Section 23 of the Railway Claim Tribunal Act in Claim Case No.9700392 passed by the learned Railway Claims Tribunal, Lucknow Bench, Lucknow dismissing the claim of the appellant in default on 09.02.2000 and rejecting the restoration application by order dated 21.01.2002.

The learned Tribunal in the impugned judgement dated 21.01.2002 has declined the application for restoration on the footing that it was time barred and the delay cannot be condoned since the Limitation Act does not apply to the proceedings under the Railway Claim Tribunal Act, 1987 read with Railway Claim Tribunal (Procedure) Rules, 1989.

The facts are narrow in compass. The claim case filed by the appellant was dismissed for non prosecution on

09.02.2000. Thereafter, the appellant filed a restoration application on 04.10.2000. There was a delay of 8 months in instituting the application for restoration. The time limit for filing an application to set aside the order dismissing the application for default is 30 days.

The question is whether the application under Section 5 of the Limitation Act applies to the proceedings under the Railway Claim Tribunal Act, 1987 read with Railway Claim Tribunal (Procedure) Rules, 1989 and whether the delay condonation application was liable to be heard on merits. The legal issue which arises for determination has been decided by the Hon'ble Gujarat High Court in **Shyam Santaram Sali (Marathi) v. Union of India** by holding as under:

"6. Rule 18 of the Railway Claims Tribunal (Procedure) Rules prescribes the time limit of 30 days in filing an application for setting aside an order dismissing the application for default. But, there is no specific exclusion or prohibition in the section for extending the time. Hence, considering the mandate of section 29(2) of the Limitation Act, section 5 of the Limitation Act is applicable. It is true that before Mukri Gopalan's case, AIR 1995 SC 2272, there were a large number of decisions to the effect that section 5 of the Limitation Act is applicable only to a civil court. Now it has been consistently held that in the absence of specific exclusion or prohibition, if limitation is prescribed in a special law for filing an application, by virtue of section 5 read with section 29(2) of the Limitation Act, Tribunal which has all the trappings of court can condone delay on sufficient reasons. This is all the more applicable to the Railway Claims Tribunal in setting aside any order of dismissal for default of the applicant in view of section 18(3) of the Railway Claims Tribunal Act, 1987.

7. In view of the above discussions, we are of the opinion that section 5 of the Limitation Act is applicable and Tribunal should have condoned the delay as sufficient reasons are given for condoning the delay. Here, the son of the claimants died in an accident and application was filed for compensation before the Tribunal. It is true that on one day the claimants were absent and the application was dismissed for default. By filing an application for setting aside the order dismissing the application in default and for restoring the matter, the provisions of the Limitation Act for filing application will not be applicable. There is a time limit of 30 days in filing the application. Therefore, it has to be filed within 30 days. If sufficient cause is made out, Tribunal has got power to condone the delay under section 5 of the Limitation Act and liberal approach has to be adopted by the Tribunal. Here, adequate reasons are given by the appellants for condoning the delay. Therefore, the Tribunal ought to have condoned the delay. Therefore, we condone the delay in filing the application for setting aside the order dismissing the application for default and the matter is remanded to the Tribunal for deciding the question on merits. We are not expressing any opinion regarding the merits of the matter. Parties shall appear before the Tribunal on 14.01.2008. The appeal is allowed."

The same issue fell for consideration before the Hon'ble Gujarat High Court in **Dharmesh Madhubhai Parmar v. Union of India** wherein the applicability of Section 5 of the Limitation Act to the proceedings under the Railway Claim Tribunal Act, 1987 read with Railway Claim Tribunal (Procedure) Rules, 1989 was affirmed and the application for delay condonation was allowed on merits stating the legal position as under:

"6. Rule 18 of the Railway Claims Tribunal (Procedure) Rules prescribes the time limit of 30 days in filing an application for

setting aside an order dismissing the application for default. But, there is no specific exclusion or prohibition in the section for extending the time. Hence, considering the mandate of section 29(2) of the Limitation Act, section 5 of the Limitation Act is applicable. It is true that before Mukri Gopalan's case, AIR 1995 SC 2272, there were a large number of decisions to the effect that section 5 of the Limitation Act is applicable only to a civil court. Now it has been consistently held that in the absence of specific exclusion or prohibition, its limitation is prescribed in a special law for filing an application, by virtue of section 5 read with section 29(2) of the Limitation Act, Tribunal which has all the trappings of court can condone delay on sufficient reasons. This is all the more applicable to the Railway Claims Tribunal in setting aside any order of dismissal for default of the applicant in view of section 18(3) of the Railway Claims Tribunal Act, 1987.

In view of the above discussions, we are of the opinion that section 5 of the Limitation Act is applicable and Tribunal should have condoned the delay as sufficient reasons are given for condoning the delay. Here, the son of the claimants died in an accident and application was filed for compensation before the Tribunal. It is true that on one day the claimants were absent and the application was dismissed for default. By filing an application for setting aside the order dismissing the application in default and for restoring the matter, the provisions of the Limitation Act for filing application will not be applicable. There is a time limit of 30 days in filing the application. Therefore, it has to be filed within 30 days. If sufficient cause is made out, Tribunal has got power to condone the delay under section 5 of the Limitation Act and liberal approach has to be adopted by the Tribunal. Here, adequate reasons are given by the appellants for condoning the delay. Therefore, the Tribunal ought to have condoned the delay. Therefore, we condone the delay in filing the application for setting aside the order dismissing the

application for default and the matter is remanded to the Tribunal for deciding the question on merits. We are not expressing any opinion regarding the merits of the matter. Parties shall appear before the Tribunal on 14.01.2008. The appeal is allowed."

The judgments rendered by the Hon'ble Gujarat High Court in **Shyam Santaram Sali (Marathi) (supra)** and **Dharmesh Madhubhai Parmar (supra)** will govern the fate of this case as well.

In the wake of the preceding discussion, this Court finds that Section 5 of the Limitation Act is applicable to the proceedings taken out under the Railway Claim Tribunal Act, 1987 read with Railway Claim Tribunal (Procedure) Rules, 1989. The delay condonation application filed in support of the restoration application is liable to be considered on merits.

The cause shown for the application for delay condonation discloses that the case was transferred from the Tribunal at Gorakhpur to the Railway Claims Tribunal at Lucknow. Due to oversight on part of the office of the learned counsel for the appellant, this fact could not be communicated to the appellant. The absence of the appellant /his counsel when the matter was taken up for hearing before the learned Railway Claims Tribunal at Lucknow was due to bonafide reasons and for circumstances beyond his control. The appellant upon getting knowledge of the order dismissing the claim petition for non prosecution immediately filed a restoration application without further delay. The application for delay condonation discloses that the

cause for delay was genuine, bonafide and the delay was not intentional. This Court also finds that the appellant was always diligent in the prosecution of his claim. Moreover, when the substantive rights of the parties are engaged before the courts, the endeavour of the courts is always to serve substantive justice and not shut the doors of justice to the claimants on technicalities.

In this wake, the application for delay condonation is liable to be entertained and is allowed. The restoration application is liable to be allowed and is allowed.

The judgement and order dated 09.02.2000 as well as 21.01.2002 passed by the learned Railway Claims Tribunal, Lucknow Bench, Lucknow is liable to be set aside and is set aside.

The matter is remitted to the learned tribunal for decision on merits.

The instant first appeal from order is allowed.

Order Date :- 16.8.2023
Ashish Tripathi