



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 9957 of 2023
Decided on: 22.04.2024

Ranjeet Singh

..... Petitioner

Versus

The Presiding Officer CGIT-cum-LC-1, Chandigarh & Ors.

..... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the petitioner : Mr. Devender Kumar, Advocate.

For the respondent : Mr. Balram Sharma, Deputy Solicitor
General of India.

Sandeep Sharma, Judge (oral)

Being aggrieved and dissatisfied with the order dated 30.11.2022 passed by the Industrial Tribunal-cum-Labour Court-I, Press Depot Building, 2nd Floor, Sector 18, Chandigarh, whereby miscellaneous application bearing No. 6 of 2022 having been filed by the petitioner under Section 5 of Limitation Act for condonation of delay in claim petition, came to be dismissed, petitioner has approached this Court in the instant proceedings, praying therein to set aside the aforesaid order.

2. Having regard to the nature of prayer made in the present petition and order proposed to be passed, coupled with the law laid down in judgment dated 02.04.2024 passed by Hon'ble Apex Court in Civil Appeal No. 4633 of 2024 titled ***Purni Devi & Anr. Vs. Babu Ram & Anr.***, this court sees no necessity to call for the reply, rather petition can be disposed of on the basis of material available on record as well

¹ Whether the reporters of the local papers may be allowed to see the judgment?

as judgment passed by Hon'ble Apex Court as taken note herein above.

3. Precisely, the facts of the case as emerge from the record are that petitioner-workman, who was allegedly terminated on 10.08.2016, filed claim petition directly in Industrial Tribunal-cum-Labour Court-I, Press Depot Building, 2nd Floor, Sector 18, Chandigarh, under Section 2-A of the Industrial Disputes Act (herein after to be referred to as the "Act"), but since the same was filed beyond prescribed period of limitation, he also filed an application under Section 5 of the Limitation Act for condonation of delay. However, the fact remains that aforesaid application was rejected by learned Tribunal below on the ground that no specific explanation has been rendered on record qua inordinate delay in maintaining the accompanying claim petition. Admittedly, claim petition, if any, under Section 2-A of the Act could have been filed within a period of three years from the date of communication, whereas in the case at hand, petitioner filed claim petition on 21.11.2022 i.e. after expiry of period of limitation.

4. Having perused claim petition filed by the petitioner, this Court finds that specific plea was taken by the petitioner that delay occurred on account of choosing wrong forum because, prior to filing the claim petition, petitioner had filed petition before Labour Commissioner, Chandigarh, as is evident from the communication dated 26.05.2022 issued under the signatures of Assistant Labour Commissioner (C), Chandigarh, (Annexure P-6), wherein it has been clearly certified that petitioner herein filed claim petition under Section 2-A of the Act in the office of Assistant Labour Commissioner on

02.03.2022. After issuance of aforesaid Certificate, petitioner herein filed a claim petition before Industrial Tribunal-cum-Labour Court-I, Press Depot Building, 2nd Floor, Sector 18, Chandigarh, but on account of pendency of dispute before Labour Commissioner prescribed period of limitation of three years expired. The moot question, which needs to be determined in the case at hand is “whether period consumed during pendency of the petition filed by the petitioner at first instance before Labour Officer-Cum-Conciliation Officer, Chamba, District Chamba, HP, was required to be excluded by the Industrial Tribunal-cum-Labour Court-I, Press Depot Building, 2nd Floor, Sector 18, Chandigarh, while considering the prayer made on behalf of the petitioner for condonation of delay in maintaining the petition under Section 2-A of the Act.”

5. Aforesaid question has been duly answered by Hon'ble Apex Court in ***Purni Devi supra***, wherein Hon'ble Apex Court categorically held that when it is evident from the record that applicant pursued the matter *bona fide* and diligently and time was consumed in prosecuting remedy before wrong forum, time spent before wrong forum is required to be excluded, while computing delay, if any, in competent court of law.

“24. In view of the submissions raised, the issue which arises for consideration of this Court is as to whether the period (18.12.2000 to 29.01.2005) diligently pursuing execution petition before the Tehsildar, would be excluded for the purposes of computing the period of limitation or not.

Analysis & Consideration

25. The relevant portion of Section 14 of the Limitation Act is extracted as under, for ready reference:

“Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction. ...

...

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

....

26. The Plaintiffs have submitted that the provision of Section 14 of the Limitation Act, finds place in the Limitation Act applicable to the then State of J&K, which has not been contested by the Respondents.

27. On a perusal of Section 14(2) of the Limitation Act, which is also applicable to the State of Jammu and Kashmir, it is evident that it carves out an exception excluding the period of limitation when the proceedings are being pursued with due diligence and good faith in a Court “which from defect of jurisdiction or other cause of a like nature, is unable to entertain it”.

28. The first objection raised by Defendants is that the plea of exclusion of limitation has not been raised before the Courts below and cannot be raised at the first instance before this Court.

29. We do not find merit in this submission, the learned High Court in paragraph 9 has categorically recorded the submission of the Plaintiff pertaining to the exclusion of time spent in pursuing the proceedings before the learned Tehsildar. Therefore, it cannot be said that the plea of exclusion has been raised for the first time, before this Court.

30. The principles pertaining to applicability of Section 14, were extensively discussed and summarized by this Court in Consolidated Engg. Enterprises (Supra), wherein while holding the exclusion of time period under Section 14 of the Limitation Act to a petition under Section 34 of the Arbitration Act it was observed:-

“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes

evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and
- (5) Both the proceedings are in a court.”

31. This Court in Consolidated Engg. Enterprises (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

32. In the present case, it is not in dispute that:-

(i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.

(ii) The failure of the execution proceedings was due to a defect of jurisdiction.

(iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.

(iv) Both the proceedings are in a court.

31. This Court in Consolidated Engg. Enterprises (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

32. In the present case, it is not in dispute that:-

(i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.

(ii) The failure of the execution proceedings was due to a defect of jurisdiction.

(iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.

(iv) Both the proceedings are in a court.

33. The only objection pointed out by the Respondent to the ingredients for invocation of Section 14, is that the Plaintiff have not approached this Court with clean hands and did not approach the Court of the Tehsildar diligently and in good faith.

34. The judgment of this Court in M.P. Steel (Supra) discussed the phrases, "due diligence" and "in good faith" for the purposes of invocation of Section 14 of the Limitation Act. While considering the application of Section 14 to the Customs Act, it was observed:

"10. We might also point out that Conditions 1 to 4 mentioned in the Consolidated Engg. case [(2008) 7 SCC 169] have, in fact, been met by the Plaintiff. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engg. [(2008) 7 SCC 169] itself. These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.

xxx xxx xxx

49. the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice."

(emphasis supplied)

6. In the instant case, it is quite apparent from the record that before filing the petition under Section 2-A of the Act before Industrial Tribunal-cum-Labour Court-I, Press Depot Building, 2nd Floor,

Sector 18, Chandigarh, petitioner herein had been prosecuting remedy before Labour Officer-Cum-Conciliation Officer, Chamba, District Chamba, HP, who subsequently vide communication dated 26.08.2022 advised petitioner herein to approach Industrial Tribunal-cum-Labour Court-I, Press Depot Bulding, 2nd Floor, Sector 18, Chandigarh and as such, it may not be appropriate to conclude that no plausible explanation was rendered on record by the petitioner, while making prayer for condonation of delay in maintaining the accompanying claim petition under Section 2-A of the Act.

7. Consequently, in view of discussion made herein above as well as law taken into consideration, present petition deserves to be allowed and accordingly, the same is allowed. Impugned order dated 31.11.2022 passed by the Industrial Tribunal-cum-Labour Court-I, Press Depot Bulding, 2nd Floor, Sector 18, Chandigarh, is quashed and set aside and delay, if any, in maintaining the accompanying claim petition under Section 2-A of the Act is condoned and learned Tribunal below is directed to decide the petition on its own merit. Learned counsel representing parties undertake to cause presence of their respective clients before Industrial Tribunal-cum-Labour Court-I, Press Depot Building, 2nd Floor, Sector 18, Chandigarh, on 27.05.2024, enabling it to proceed with the matter in accordance with a direction contained in the instant order. Pending applications, if any, stand disposed of.

(Sandeep Sharma)
Judge

April 22, 2024
(sunil)