

Union of India Vs. Amar Enterprises

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Court : Mumbai

Decided On : Aug-10-1989

Reported in : 1992(61)ELT218(Bom)

Judge : H.H. Kantharia and; S.K. Desai, JJ.

Appeal No. : Appeal No. 1626 of 1988 in W.P. No. 423 of 1981

Appellant : Union of India

Respondent : Amar Enterprises

Judgement :

S.K. Desai, J.

1. This is an appeal from the decision of the writ Court given on June 10, 1987 in Writ Petition No. 423 of 1981. It speaks volumes of the efficiency of the Central Government Advocate that the belated appeal which was lodged on 9th December, 1987 came up for admission sometime in August, 1989. Even before the single Judge the respondents to the petition, i.e., the appellants before us had remained absent. We asked the learned Advocates for the appellant the reason why a motion was not taken out before the single Judge or other appropriate Judge for setting aside the ex parte order on the writ petition (on showing sufficient cause for the absence) and for obtaining a rehearing of the same. The only explanation we have been given is that this course was not followed on the advice

of the Deputy Legal Advisor, Ministry of Law. Obviously this advice had to be given because the appellants did not take out a Motion within the period allowed or because there was no sufficient cause for the non-appearance. Therefore, this explanation for not taking out the motion is misleading. Obviously the appeal had to be filed since the Motion was not taken out in the time allowed under the Rules for taking out such Motion. This appeal also has a chequered career. Since the objections were not removed, one of them as to delay, the matter was ultimately placed before the Prothonotary under Rule 986 of the High Court O.S. Rules and after three adjournments, all undeservingly granted, the Prothonotary dismissed the appeal on 28th June, 1988. Thereafter on 1st July, 1988 the learned Advocate for the appellants took out a Motion for condonation of delay. As it was taken out after the appeal has been rejected under the Rule, the Motion was incompetent. However, on 5th July, 1988 Counsel appeared with the Central Government Advocate before the Chamber Judge and had the Prothonotary's order revised and appeal restored. With respect to the Chamber Judge, this was a totally undeserving order. Perhaps the full facts had not been placed before him. On this Motion for condonation of delay, numbered as Notice of Motion No. 1829 of 1988, delay appears to have been condoned on 18th November, 1988 though we are unable to find out the minutes of the same. Again with respect to the Bench which condoned delay. We say that there was no warrant for condoning the delay of such consistently negligent appellants.

2. The story does not end here. The appeal came up earlier before this very Bench in January, 1989 and on 24th January, 1989 it was dismissed for default of appearance of the appellants. On 4th February, 1989 Notice of Motion No. 409 of 1989 was taken out by the appellants for setting aside the order of dismissal for default. Prayer (a) of the Motion is in incorrect English but it would appear that on this Motion we made the Motion absolute in terms of prayer (a) directing the Appellants to pay to Respondents cost of Rs. 150/- as condition precedent. The restored Appeal has now come up for admission. We are amazed at the manner in which the Union of India conducts its litigation. It is consistently wasting time of the Court and public money in a thoroughly irresponsible manner and if that be so we think the Appeal is required to be dismissed on this very ground alone. We have recorded what has transpired in the instant matter to see whether there is any

desire in future to improve either on the part of Department of Law or the Department of Finance who are concerned with the appeal. However, all hopes expressed in the past in this regard have been in vain and over the last 20 years instead of any improvement gross deterioration has been perceived in the litigation conducted on behalf of the Union of India. Appeal to stand dismissed. Parties to bear their own costs. It may be mentioned that counsel for the Union of India did not have one word of remorse for the misconduct of his client.

3. Prothonotary is directed to send a copy of this order to the Hon'ble Union Minister for law and Hon'ble Union Minister for Finance. We give the above direction because the Government of India claims to be concerned be at the delays in litigation in the Court. One of the principle reasons for the delays and the backlog in the Court dockets (at least in Bombay) is the thoroughly improper and irresponsible manner in which the Union as a litigant conducts its litigation.

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