

Sasa Enterprises Vs. Pramod Kumar

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Court : Allahabad

Decided On : Mar-23-1983

Reported in : 1(1984)ACC455

Judge : N.N. Mittal, J.

Appellant : Sasa Enterprises

Respondent : Pramod Kumar

Judgement :

N.N. Mittal, J.

1. This is an application under Section 5 of the Limitation Act for condoning the delay in filing the First Appeal from Order directed against an order, dated 4-7-1981, passed by the Commissioner under the Workmen's Compensation Act (hereinafter referred to as 'the Act').

2. The appeal was filed on 4-2-1982 and the office reported that there was a delay of 155 days. The applicant subsequently filed an application under Section 5 of the Limitation Act for condoning the delay in filing the appeal and further prayed for time to file certificate of payment as required under the provisions of Section 30 of the Act.

3. The relevant facts are that the opposite party, who was an employee in the appellant's concern, met with an accident on 13-12-1980 and was injured. After serving requisite notice on 17-2-1981 a claim was filed for compensation before the Commissioner under the Act on 24-2-1981. It is alleged that the applicant had no notice of that and the opposite party obtained an ex-parte order in his favour on 4-7-1981. For the first time the applicant had knowledge of the order on 7-12-1981 when in pursuance of the order of the Commissioner, the order was put into execution by the Collector and an Amin was sent to attach the property. Immediately copies were applied for and delivered to the applicant on 10-12-1981. An Application, addressed to Sri K.K. Pandey, Additional Labour Commissioner, Kanpur Zone, Kanpur was then moved. This application was dismissed by an order dated 10-12-1981 on the ground that no action could be taken at his level as the matter already stands decided by a competent authority.

4. Another effort appears to have been made on 21-12-1981 but the same was rejected on 28-12-1981 by one Sri Prem Sagar who was Commissioner under the Act. Ostensibly, reasons for doing so appear to be that the application was time barred and that a similar application had already been rejected by the Additional Labour Commissioner and also that a recovery order had already been issued. Subsequently, an application was moved before the Labour Commissioner but when no orders on the same were passed for a long time the counsel at Allahabad was contacted on 2nd February, 1982 who advised that money should first be deposited. Money was, therefore, deposited and a bank-draft was obtained on 6-2-1982 but as no one was available in the office to receive it, ultimately, the same was sent by registered post on 8-2-1982. The application for condonation of delay was, thereafter, moved on 9-2-1982.

5. It may be stated here that although in the appeal it is mentioned that it is directed against three orders of various dates but the counsel confined the appeal to the order dated 4-7-1981 which alone is appealable. It is also conceded that the Labour Commissioner or the Additional Labour Commissioner were not competent authorities to set aside the ex parte order dated 4-7-1981.

6. The opposite party put in appearance and has seriously contested the application on various grounds such as (i) that the appeal was not competent as no certificate by Commissioner under the Act that the amount due under the order had been deposited was filed with the memorandum of appeal (ii) that the entire amount due had not been deposited on 9-2-1982 as it did not include the costs and interest and (iii) that the application under Section 5, Limitation Act did not disclose any good or sufficient ground for condoning the delay in filing the appeal. In this connection it is further urged that until such time as a memorandum of appeal complies with all the legal requirements it does not become competent and the whole period up to such date must be explained and each day's delay must be explained to the satisfaction of the Court. It was submitted that this had not been done in the present case and as such the appeal merited to be dismissed.

7. Having heard learned Counsel for the parties I find that the objection raised have force. The relevant portion of Section 30 of the Act is as follows:

Section 30--(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump-sum;

(aa) an order awarding interest or penalty under Section 4-A.

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent:

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided further...

Provided further that no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of Section 5 of the Indian Limitation Act, 1908 (9 of 1908) shall be applicable to appeal under this section.

8. According to the third proviso of Section 30(1) of the Act maintainability of appeal by employer is barred unless the memo of appeal was accompanied by a certificate issued by the Commissioner that the appellant had deposited with him the amount payable under the order appealed against. The proviso makes it incumbent for an employer-appellant to first pay the money due under the order and then obtain a certificate from the authority concerned and this proof must be filed at the time of presentation of appeal. The provision is mandatory in nature and not merely directory and, as such, the appeal filed without the accompanying certificate would be incompetent. Learned Counsel for the appellant has tried to place reliance on *Ram Narain v. Mariyan* : AIR1951 Pat260 , but that does not appear to be good law any longer in view of, *Bahurangi Lal v. Sahebjan* AIR 1956 Pat 292. There is ample authority to the contrary and for this reference may also be made to 1957-Himachal Pradesh 26. In view of the clear provision of law there is no need for much of a discussion. Suffice it to say that the whole act has been so as to sub-serve the cause of the employees and this provision has obviously been made with a view to curb and restrict the right of the employer to file an appeal so that he must first obey and comply with the order appealed against before his appeal could even be entertained. It is a wholesome provision and were if not so it would have been very easy for an employer to harass the poor employee by merely filing an appeal and then delay the payment of the money due to endless execution proceedings thus gaining an undue advantage over the injured employee who could thus be put to untold hardship. It is to avoid and obviate such difficulty that this provision had been made and I have no manner of

doubt that the proviso can best serve the intention behind the legislation only if the same was held to be mandatory and not merely directory in nature. I have given careful consideration to the matter and I feel no hesitation in holding that an appeal under Section 30 of the Act filed by an employer would not be competent unless the memorandum of appeal was accompanied by the requisite certificate of the Commissioner.

9. Learned Counsel for the applicant, however, tried to get over the difficulty by urging that although the certificate is dated 12-2-1982, the payment had actually been made by him on 6-2-82. It is urged that even if the appeal actually presented on 4-2-1982 without the requisite certificate the same could be treated as filed on 12-2-1982 when the certificate required under the Act was granted. However, there would be two difficulties in accepting this argument, firstly, the language of the proviso itself states in no ambiguous language that no appeal shall lie unless 'memorandum of appeal is accompanied by a certificate.' On the language of the section it appears essential that the memorandum of appeal ought to be accompanied by the requisite certificate. The process of presenting the memorandum of appeal and that of filing the certificate of the Commissioner must be simultaneous and under this proviso subsequent filing of a certificate does not appear to be contemplated at all. Even assuming for the sake of argument, that it was possible to interpret the proviso in the manner suggested by the learned Counsel, even then mere obtaining of the certificate alone would not be sufficient. What is relevant is that the said certificate ought to be filed in the High Court. Defect in the filing of appeal could not be cured until the certificate had been actually filed in the Court. This was done by the applicant only on 30-9-1982 when a rejoinder affidavit was filed annexing the photostat copy of the relevant certificate. Although this affidavit had been sworn on 26-5-1982 yet no effort was made to file the same earlier. There is no explanation why it was filed so late. Even on its own strength the argument of the learned Counsel fails as the delay in filing the appeal would be cured only on the date when the certificate was actually filed in the Court, i.e., on 30-9-1982. The appeal at best can be deemed to have been filed on 30th September, 1982 and not on 4-2-1982 as contended. It is only on this date i.e. 30-9-1982 that strict compliance of the third proviso to Section 30(a) has been made. Secondly, the document annexed to the affidavit is only a

photostat copy of the certificate granted by the Commissioner under the Act and not the original. Can this photostat copy be deemed to be a substitute for the original certificate? To This day the original of the certificate dated 12-2-1982 has not been filed on the record. In my opinion, this cannot amount to be strict compliance of the requirements of law. It may appear that the view that I am taking is too technical, but in the light of the background of legislative intent I think I am right in taking a stricter view of the matter. The appellant ought to file the certificate and not merely give its proof.

10. Even the period of limitation for filing the appeal under this section is admittedly sixty days. The appeal lies against the order of the Commissioner to the High Court. There is no provision enabling the parties to file the appeal from the date of knowledge of the order. The language of the section shows that it is the date of the order from which the period of limitation has to be reckoned and since the Code provides for its own limitation and procedure it cannot be inferred that there is some provision inherent therein to reckon the limitation from the date of the knowledge of the order. The fact that the provisions of Section 5, Limitation Act have been specifically made applicable itself indicates that in cases of this type the appellant may file a proper memorandum of appeal even beyond the period of sixty days from the date of the order but then the entire period of delay should be satisfactorily explained. Considering the matter in this light it would have been competent for the applicant to file the appeal even beyond sixty days of the order by explaining the reason for the delay, such as absence of knowledge of the order passed against him earlier. If that delay is properly explained then the appeal would become competent after securing an order from the High Court for condoning the delay under Section 5 of the Limitation Act.

11. Admittedly, the order under appeal in this case had been passed on 4-7-1981 and the period of sixty days would expire on 2-9-1981. The delay in filing the appeal to be explained here would be from 3rd of September, 1981 to 30th of September, 1982. The affidavit which has been filed in support of the application does not make any effort to explain this entire delay. What has been done is that lame effort to explain the delay only between 3rd September, 1981 to 7th December, 1981 on the ground that no notice had been served on it and that it

became aware of the order for the first time on 7th of December, 1981 when the Amin came for making recovery. The delay from 7th of December, 1981 to 28th of December, 1981 is sought to be explained by showing that the appellant had been taking steps before the Court of the Additional Labour Commissioner etc. for recall of the order under appeal. Any time spent by the party in making any futile application before an authority which had no jurisdiction in the matter cannot be treated as a proper or sufficient ground. Nothing has been said to explain why such meaningless steps had been taken. If the action was neither bona fide nor the the party was in any way mislead, he cannot put it forward as a ground to condone the delay. Apart from that, after dismissal of the application on 28th of December, 1981 by the Commissioner under the Act there is another round of application moved by him before the Labour Commissioner who had no concern with the matter and the applicant unnecessarily and without any purpose waited till 2-2-1982 to contact his counsel at Allahabad. He could only explain some delay from 2nd February to 4th February when the memo of appeal was actually presented but the subsequent delay has again remained totally unexplained.

12. Having considered the entire matter, therefore, I am not at all satisfied that the applicant has been able to satisfactorily explain the delay in filing the appeal.

13. The only remaining objection of the opposite party, however is not well founded. The order under appeal, required payment of Rs. 9,450 as lump sum compensation and Rs. 200 as costs. Apart from this six per cent interest has been awarded on the amount of compensation from the date of order till the date of its payment. A perusal of proviso 3 will show that the condition precedent for payment applies only in respect of that part of the order which comes under Clause (a) of Section 30(1) and not to that part which may fall under sub-Clause (aa). Claim for compensation is awardable under Section 4 of the Act. Section 4-A requires that the compensation payable under Section 4 has to be paid as soon as it falls due. Sub-Clause (3) thereof authorises the Commissioner to award interest at the rate of six per cent if compensation was not paid within one month of its becoming due.

The claim for interest, therefore, stands entirely on a different footing than the claim for compensation itself. The third proviso, therefore, only requires payment

of such amount only as may have been awarded by way of compensation in a lump sum. But it does not include the amount which is payable by way of interest over it. It also does not include the amount of costs that may be awarded by the Commissioner for which a separate provision is to be found in Section 26 of the Act. For strict compliance to the third proviso to Section 30(1) only that amount need be deposited as has been awarded within the meaning of sub-Clause (a) of the section. In my opinion, therefore the amount of Rs. 9,650 deposited by the applicant was sufficient compliance and it cannot be urged that the amount deposited was in any way deficient.

14. Having regard to the entire discussion made above I find that neither the appeal was competent as the same was not accompanied by the certificate of Commissioner indicating that the money due under its order had been paid over nor there are grounds which may satisfactorily explain the delay in filing the appeal which may entitle the applicant for condonation of delay in filing the appeal.

15. In the result both the application under Section 5 of the Limitation Act and the appeal under Section 30 of the Act merit to be dismissed.