

State of Rajasthan Vs. Bhanwar Kanwar (Smt.) and ors.

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Court : Rajasthan

Decided On : Jan-15-1991

Reported in : (1999)IIILLJ583Raj

Judge : Milap Chandra Jain, J.

Acts : Workmen's Compensation Act, 1923 - Sections 30; Code of Civil Procedure (CPC) - Order 41, Rule 19

Appeal No. : S.B.Civil Restoration Application No. 431/1989

Appellant : State of Rajasthan

Respondent : Bhanwar Kanwar (Smt.) and ors.

Advocate for Pet/Ap. : H.R. Panwar, Addl. Govt. Adv.

Disposition : Application dismissed

Judgement :
ORDER

Milap Chandra Jain, J.

1. This appeal was filed under Section 30, Workmen's Compensation Act, 1923 against the order of the Workmen's Compensation Commissioner, Sri Ganganagar dated January 31, 1984 awarding compensation to the tune of Rs. 19,200/- to the

respondents on the death of her husband/their father, Gajanand. On August 25, 1987, the following order was passed :

'HON'BLE shri N.C. SHARMA, J.

Mr. B.C. Bhansali for the appellant.

Learned counsel for the appellant wants time to file notices for Ghanshyam Singh and Sampat Singh, legal representatives of deceased respondent No. 1. He should do so within 5 days. In default whereof this miscellaneous appeal shall stand dismissed without reference to the Court.'

2. On September 1, 1987, the office reported that process fee and notices have not been filed. Accordingly, the Deputy Registrar (Judicial) passed order on September 4, 1987 that the appeal stands dismissed. On May 2, 1989, an application under Order 41 Rule 19, C.P.C. for the restoration of the appeal was moved stating that the appellant filed notices on August 31, 1987, due to oversight the concerned clerk of the office of the Government Advocate, Jodhpur mentioned 'defective' on it and as a result thereof the notices reached the defective Section of the High Court instead of Civil Section. An affidavit of Smt. Kiran Jain, U.D.C. of the office of the Government Advocate, Jodhpur has been filed in support of it. On December 19, 1989, an application under Section 5, Limitation Act was filed for condoning the delay in submitting the notices beyond the stipulated period. On March 27, 1990, additional affidavit of Smt. Kiran Jain was filed.

3. Arguments of the learned Government Advocate have been heard at length.

4. Admittedly the said appeal stood dismissed on the expiry of 5 days from August 25, 1987 as per order dated August 25, 1987 and the restoration application was moved under Order 41 Rule 19, C.P.C. on May 2, 1989. Application under Section 5, Limitation Act for the condonation of delay was moved as late as on December 19, 1989. It runs as under :

'In continuation of the Application under Order 41, Rule 19, C.P.C. dated April 29, 1987 the State-appellant most respectfully submits this Application under Section 5 Limitation Act with the prayer that the aforesaid previous Application dated April

29, 1989 along with its Affidavit may kindly be treated as part of this Application and the delay so caused in submitting the notices beyond the stipulated period may kindly be condoned and the case may kindly be ordered to be listed at its original number as the delay so caused is due to rush of work without any ulterior motive.'

It is thus clear that this application was moved for the condonation of delay occasioned in filing notices in compliance with the order dated August 25, 1987 and not for explaining the delay of about two years in moving the said application under Order 41 Rule 19, C.P.C.

5. Para No.3 of the Additional affidavit dated March 27, 1990 of Kiran Jain, U.D.C. of the office of the Government Advocate, Jodhpur runs as under :

'3. That only on April 28, 1989 it came to my notice through the Controller, Litigation, Jodhpur that the aforesaid appeal has been dismissed for not filing the notices as ordered by the Hon'ble Court on September 25, 1987 and immediately thereafter I brought this matter to the knowledge of the Government Advocate, Jodhpur and the restoration application was filed on April 29, 1989 i.e. only after one day of the date of knowledge. Thus the delay in filing the restoration application is bonafide one and not the intentional one and deserves to be condoned.'

The limitation under Article 122, Limitation Act, 1963 for moving an application for restoring an appeal dismissed for default of appearance or for want of prosecution or failure to pay costs of service of process is 30 days from the DATE OF DISMISSAL. Under Section 5, Limitation Act such an application may be admitted after prescribed period if the applicant satisfies the Court that he had SUFFICIENT CAUSE for making the application within such period. It is clear from the application moved under Section 5, Limitation Act dated December 19, 1989 that it was moved for condoning the delay in submitting the notices and not for condoning the delay of about two years scurred in moving the said application under Order 41 Rule 19, C.P.C. Even in the additional affidavit, the delay of about two years has not at all been explained. It has simply been stated in para No.3 of it, quoted above, that only on April 28, 1989 it came to the notice of the deponent

Kiran Jain, U.D.C. through the Controller, Litigation, Jodhpur that the said appeal had been dismissed for not filing the notices. There is nothing on the record to indicate as to what steps or action was taken by the office of the Government Advocate, Jodhpur to see as to what happened in the said appeal after filing the process fee on August 31, 1987. It is stated in the application moved under Order 41 Rule 19, C.P.C. that the appeal was listed on September 4, 1987. There is also nothing on the record to indicate as to what action or step was taken on September 4, 1987 by the Government Advocate, Jodhpur. It may be mentioned here that the order for issuing notices to the respondent was passed as early as on April 24, 1984. Till August, 1987, the respondents were not served as correct and complete steps were not taken in time by the Government Advocate, Jodhpur. On several dates, adjournments were granted for taking steps. On July 19, 1985, the appeal was dismissed in the default of appearance and prosecution. On February 19, the following order was passed in this appeal:

'HON'BLE shri DWARKA PRASAD, J.

Mr. M.S. Ghori, Asstt. Govt. Advocate.

It has come to the notice of this Court in this case that the counsel appearing for the Government tried to misguide the Court. On January 22, 1985 it was stated on behalf of the State that notices and extra copies had been filed. On checking the office found that the summons has been filed but the extra copies had not been filed. When the matter was again listed before the Court on January 25, it was again stated on behalf of the State Government that extra copies have been filed on that day, while summons had already been filed. The office again found that the extra copies had not been filed. The learned Assistant Government Advocate has filed the extra copies today along with an application for condonation of delay. The delay is condoned and the notices may be issued now.

However, a copy of this order as well as of the orders passed by this Court dated January 22 & 25, 1985, may be sent to the Chief Secretary to the Government of Rajasthan by way of illustration, to bring to his notice the manner in which the proceedings are conducted on behalf of the State in this Court.

Sd/- DwarkaPrasad.'

6. In view of these facts and circumstances, it is very difficult to say that there was any cause what to say of sufficient cause in moving the said application under Order 41 Rule 19, C.P.C. with delay of over 20 months. To say the least, the above facts show that the office of the Government Advocate, Jodhpur is not functioning in the manner in which it is required to function and no follow up action is taken. It is one of the main causes of delay in the disposal of the Government cases in the High Court. If serious view of such lapses is not taken, the condition may further deteriorate and Government interest may suffer more. It would be in the interest of the Government itself that serious view of such a lapse is taken immediately.

7. Consequently the application dated May 2, 1989 moved under Order 41 Rule 19, C.P.C. is dismissed.

8. Let a copy of this order be sent to the Legal Remembrancer, Government of Rajasthan, Jaipur.

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