

State of Rajasthan Vs. Choudhary Constructions

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Court : Rajasthan

Decided On : Feb-10-1998

Reported in : AIR1998Raj123

Judge : P.C. Jain, J.

Acts : [Limitation Act, 1963](#) - Sections 5

Appeal No. : Civil Misc. Appeal (Def.) No. 2524 of 1996

Appellant : State of Rajasthan

Respondent : Choudhary Constructions

Advocate for Def. : Dinesh Maheshwari, Adv.

Advocate for Pet/Ap. : L.M. Lodha, Adv.

Disposition : Application dismissed

Judgement :

ORDER

P.C. Jain, J.

1. The plaintiff has filed this appeal under Section 39 of the Arbitration Act, 1940 (for short the Act') against the order and decree passed by the learned District Judge, Bikaner in civil misc. case No. 40/94 modifying the award passed by the

sole Arbitrator on 15-1-1994.

2. The officer, after presentation of this appeal, computed the period of limitation and made a report that the appeal was barred by time by 79-days.

3. Faced with this dilemma the appellant filed an application under Section 5 of the Limitation Act praying for condonation of delay. It was stated in the application that the delay caused in filing the appeal with delay is neither deliberate nor intentional. It was averred that much procedure is involved for taking sanction from the State Government and the matter is routed through many levels and the papers pass in the hands of many officers. The procedure involved has resulted into delay. Since a heavy stakes of the Government are involved, this appeal could not be thrown out merely on the ground that it is barred by time. It would in the fitness of things to impart substantial justice on the merits of the case. Learned counsel for the appellant has cited Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353 for the observations made therein in order to substantiate his averments.

4. Learned counsel for the respondent very vehemently contested the application and opposed teeth and nail condonation of delay sought by the appellant. Learned counsel has submitted that the appellant has not furnished a reasonable explanation for delay in filing the appeal. Merely making bald allegations that for obtaining sanction of the Government for filing an appeal, in suchcases since the papers pass through various routes and many officers deal with such papers, delay is caused Learned counsel has relied on State of Rajasthan v. Sukhdeo Singh, (1996) 2 Raj LW 598. In this case also similar arguments were advanced and the Court repealed the same by observing as follows :--

'There is nothing on record as to when the certified copies obtained were sent to the Department and as to why the sanction could not be accorded within a reasonable time. There is also nothing on record to indicate as to when the sanction was granted and when the papers were sent to the concerned Department for filing an appeal and as to why the papers were not immediately processed after sanction was granted. It is not shown to this Court that the appeal could not be presented within the period of limitation in spite of due reasonable steps were taken in the matter. The counsel for the appellant has relied upon a

decision reported in *State of Haryana v. Chandra Mani*, (1996) 3 JT (SC) 371: (AIR 1996 SC 1623) and has contended that a pragmatic approach may be taken in the matter while considering the procedural delay caused in the Govt. Department as a usual feature.

Considering the variety of activities Govt. is engaged and the ultimate sufferer on account of dismissal of appeal being public, there may be difference of degree of proof required by the Govt. and the private party to establish sufficient cause but that would not or cannot relieve the Govt. from alleging and proving sufficient cause for delay. The Govt. is not required to give reasons for each day's delay but has to allege and prove overall cause for the entire period. The Govt. cannot get over the delay simply because it is Govt.

5. The observations made in *State of Rajasthan v. Sukhdeo* (1996 (2) Raj LW 598) (supra) aptly covers the field and no case is made out for condonation of delay. The appellant is guilty of not furnishing material particulars as to why the delay has been caused. Making sweeping averments as above would not suffice.

6. I therefore, dismiss the application filed by the appellant and hold that the appeal filed by the appellant is hopelessly barred by time and the same is dismissed.