Ashok Vs. the Competent Authority and District Revenue Officer and ors.

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Court : Chennai

Decided On : Sep-08-2006

Reported in : (2006)4MLJ714

Judge : V. Dhanapalan, J.

Acts : Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 - Sections 4(4), 11 and 81; Limitation Act - Schedule - Article 97 - Sections 4, 5, 8, 12, 24 and 29(2); Land Reforms Act - Sections 8; Tamil Nadu Stamp (Prevention of Under-Valuation of Instruments) Rules, 1968; Code of Criminal Procedure (CrPC)

Appeal No. : C.M.A. Nos. 3984 and 3985 of 2005 and C.M.P. Nos. 19601 and 19602 of 2005

Appellant : Ashok

Respondent : The Competent Authority and District Revenue Officer and ors.

Advocate for Def. : Senthilnathan, AGP (C.S.) for Respondent No. 1

Advocate for Pet/Ap. : P. Rajamanickam, Adv.

Disposition : Appeal dismissed

Judgement :

V. Dhanapalan, J.

1. These two Civil Miscellaneous Appeals preferred by one Ashok viz., the 10th respondent before the Special Judge, T.N.P.I.D. Act, Chennai ('Tribunal'), are directed against the orders dated 22.07.2005 passed by the Tribunal in I.A. Nos.224 and 225/2004 in O.A. Nos. nil, whereby the Tribunal condoned the delay of 308 days and 276 days respectively, in filing the Original Applications and allowed the petitions filed under Section 5 of the Limitation Act.

2. The Competent Authority and Additional Commissioner (Cinema & Irrigation) Land Administration Department, Chepauk, Chennai 5 filed I.A. Nos. 224 and 225 of 2004 before the Tribunal contending that G.O. Ms. Nos.61 and 123 Home (Courts IIA) Department dated 21.01.2002 and 13.02.2002 were received on 28.01.20025 and 28.02.2002 respectively and steps were being taken to enquire into the matter and to file O.As. before the Tribunal within the prescribed time of thirty days under Section 4(4) of the T.N.P.I.D. Act, 1997 ('TNPID Act'). It was his further contention that to satisfy that the Financial Establishment has committed fraud, on receipt of the said G.Os., action was initiated to conduct enquiry with some depositors, accused and Investigating Officer and enquiries were conducted on three occasions and the Collector of Coimbatore and Registrar of Registration Department, Coimbatore were addressed for publication of attachment, besides collection of various documents and evidence relating to the attached properties to ascertain ownership details and genuineness of attachment and this long process caused inevitable delay and such delay is not wanton and it is only attributable to administrative reasons. According to him, the time-limit of 30 days is only directory rather than mandatory and the purpose of such time-limit was only to expedite the filing of the O.As. and nothing else and since public interest is involved in filing of this O.A., the afore-mentioned long process had to be necessarily undergone and hence, the delay in filing the O.As. has to be condoned.

3. The tenth respondent before the Tribunal who is the appellant herein in both the appeals, by filing his counter, contended that Section 5 of the Limitation Act, does not apply to the provisions of TNPID Act since it applies only to the proceedings arising in a suit or in any appeal under the C.P.C. and it cannot be applied to the

period of limitation provided under the statute and hence, the delay in filing the O.As. under Section 4(4) of TNPID Act should not be condoned and the petitions have to be dismissed.

4. The Tribunal, on hearing both sides and on examination of one witness on the side of the Competent Authority, came to the conclusion that the limitation period of 30 days is only directory and Section 5 of the Limitation Act is applicable to the provisions of Section 4(4) of the TNPID Act and accordingly, condoned the delay in filing the O.As. and allowed the petitions filed by the Competent Authority.

5. Mr. P. Rajamanickam, learned Counsel for the appellant in both the appeals has contended that the Tribunal has erred in holding that Section 5 of the Limitation Act is applicable to the proceedings under the TNPID Act since it was not excluded by the provision of the TNPID Act. According to him, exclusion need not be express and special provisions fixing a time limit shall exclude all other provisions in the Limitation Act. It was his further contention that the Competent Authority has not explained everyday's delay in filing the petition and on that ground also, the order of the Tribunal has to be set aside.

6. Per contra, Mr. Senthilnathan, learned Additional Government Pleader (C.S.) contended that keeping public interest in mind, the Competent Authority had to invariably undergo an elaborate process involving cumbersome formalities which caused delay in filing of O.A.s and the said delay was not caused wantonly by the Competent Authority. He further argued that being convinced that the limitation period is only directory and not mandatory, the Tribunal is right in holding that everyday's delay need not be explained and suffice if it is explained in one block.

7. The points which emerge for consideration in these two appeals are (i) whether provisions of Section 5 of the Limitation Act are applicable to the provisions of TNPID Act and (ii) whether the Tribunal is correct in condoning the delay on the part of the Competent Authority in filing the O.As.

8. With regard to the first point, viz., the applicability of Limitation Act to the provisions of TNPID Act, the learned Counsel for the appellant has relied on a decision of the Supreme Court reported in : (2004)4SCC252 (Gopal Sardar v.

Karuna Sardar) and the relevant portion is as under: (paragraph 7).Thus, there is reference to suits in Section 8 and Article 97 of the Limitation Act, but there is no reference to an application for enforcement of right of pre-emption. Having regard to the fact that the Act is a self-contained code in relation to the enforcement of rights of pre-emption and looking to the provisions of the Limitation Act, as stated above, it appears to us that when one applies for enforcement of rights of pre-emption under Section 8 of the Act, the proceedings initiated are in the nature of a suit... although Section 8 of the Act (Land Reforms Act) prescribes the period of limitation for applying to enforce pre-emption rights, it does not speak of application of Section 5 of the Limitation Act or its principles expressly and specifically to other proceedings such as appeal or revision, etc. and such a provision is not made for initiation of the proceedings under Section 8 of the Act, it follows that the Legislature did not intend to give benefit of Section 5 of the Limitation Act having regard to the nature of right of pre-emption which is considered a weak right.

9. On the other hand, some useful reference may be made to a decision reported in : 1976 CriLJ179 in the case of Mangu Ram and Anr. v. Municipal Corporation of Delhi (Mangu Ram Case) wherein it was held that by virtue of Section 29(2) of the Limitation Act, the provisions of Section 5 of the Limitation Act are applicable to any special or local law unless they are excluded in express and specific terms. In the cases on hand, it is not in dispute that the TNPID Act is a Special Act which, in express terms, does nowhere exclude the applicability of Section 5 of the Limitation Act.

10. Also, in a recent decision reported in : 2005(1)CTC733 (Indira Devi v. Inspector General of Registration) (Indira Devi case), a Division Bench of this Court, while dealing with a case under Tamil Nadu Stamp (Prevention of Under-Valuation of Instruments) Rules, 1968, observed as follows: (para 7)

In addition to this, as rightly pointed out by the learned Counsel for the petitioner, inasmuch as there is no specific exclusion of Section 5 of the Limitation Act in the Rules, we are of the view that taking note of the fact that copy of the order passed by the second respondent dated 28.11.2002 has been served/received by the appellant only on 17.12.2002, the appeal filed by the appellant on 10.02.2003 before the first respondent is well within time. The first respondent has committed error in dismissing the appeal stating that the same is barred by limitation.

11. Further, the Supreme Court, in its decision reported in : [1974]3SCR31 in the case of Hukumdev Narain Yadav v. Lalit Narain Mishra, while deciding whether the provisions of the Limitation Act are applicable to election petitions, has observed that even in the absence of any express exclusion of provisions of Limitation Act, the Court is empowered to look into as to what extent the special law excludes their operation and a portion of the relevant paragraph is as follows: (para 17)

Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words 'expressly excluded' would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual, the meaning given in the dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 and 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation....

12. In view of the ruling of the Supreme Court in Mangu Ram case and the observation of the Division Bench of this Court in Indira Devi case (supra) and since the prescribed period of 30 days is only directory in nature rather than mandatory, keeping in mind that the TNPID Act is a social piece of legislation aimed at protecting the interest of the poor depositors, I am convinced that the provisions of Section of the Limitation Act can be made applicable to an application under Section 4(4) of the TNPID Act and the first point for consideration is answered in these terms.

13. Lastly, it is to be seen whether the delay on the part of the Competent Authority in filing in the O.As. is worth condoning. In the cases on hand, admittedly, applications for making the interim attachment absolute were filed with a delay of 308 days and 276 days respectively. According to the Competent Authority, this is because, he had to examine several parties involved in the matter viz. financial establishments in default, accused, lured depositors and other Government Officers. By common sense and by looking at things from the practical point of view, it can easily be presumed how much time the competent authority may consume in fulfilling his obligations, which are primarily directed towards protecting the interest of the depositors, at large. Needless to say, without consuming the required time, the Competent Authority may not be able to do justice to his role as an officer engaged by the Government to protect the interest of the depositors which is of paramount importance. Undisputedly, the interim applications ought to have been filed by the Competent Authority within a period of thirty days as per Section 4(4) of the TNPID Act. Yet, I am of the opinion that as held by the Supreme Court in its decision reported in (supra), the Court should also consider the aspects of feasibility and practicability of the matter while the Competent Authority discharges his duty which involves cumbersome and time-consuming formalities.

14. Taking into consideration all these aspects, this Court is of the considered view that though the Competent Authority has failed to explain each and everyday's

delay in executing the Government Orders by filing the interim applications within the stipulated period of 30 days, the delay explained by him before the Tribunal, in a single block, appears to be justifiable. In that view of the matter, this Court holds that the condonation of delay of 308 and 276 days on the part of the Competent Authority, ordered by the Tribunal in I.A. Nos.224 and 225 of 2004 cannot be found fault with and the impugned orders have necessarily to be upheld.

In view of the foregoing discussion and the rulings of the Supreme Court and this Court too, the appeals deserve to be dismissed and are accordingly dismissed. No costs. Consequently, connected C.M.P. Nos. 19601 and 19602 of 2005 are closed.