

Meera Impex Vs. Cestat

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Court : Chennai

Decided On : Jan-28-2010

Reported in : [2010]25STT302

Judge : M.M. Sundresh, J.

Appeal No. : W.P. Nos. 25159, 25540, 26437 and 26451 of 2007

Appellant : Meera Impex

Respondent : Cestat

Advocate for Def. : T.R. Senthilkumar and; K. Ramakrishna Reddy, Adv.

Advocate for Pet/Ap. : A.K. Jayaraj, Adv.

Disposition : Petition allowed

Judgement :

M.M. Sundresh, J.

1. In view of the common issues involved in all the writ petitions and also in view of the fact that a common order has been passed which has been challenged in these writ petitions they have been taken up together for disposal.

2. The petitioners filed appeals to the first respondent, challenging the order passed by the 2nd respondent. While filing the applications seeking to condone

the delay of 80 to 86 days in preferring the appeals, an affidavit was filed by the authorised representative one Mr. Radhakrishna Sharma in support of the petitions filed for condoning the delay stating that the papers have been entrusted to him for filing the appeals and the appeals could not be filed in time, in view of the serious illness caused to his mother and thereafter to himself. The Tribunal has dismissed the appeals filed by the writ petitioners stating that the reasons assigned by the petitioners were not satisfactory and in any case the subsequent delay has not been explained properly. Challenging the common order passed by the Tribunal, the present writ petitions have been filed.

3. Shri A.K. Jayaraj, learned Counsel appearing for the petitioners submitted that the delay is neither wilful nor wanton and the first respondent/Tribunal ought not to have adopted hypertechnical view in dismissing the appeals. The learned Counsel further submitted that the delay is not substantial and proper reasons have been assigned for condonation. It is also submitted that the reasons assigned by the Tribunal that there was no explanation subsequent to the Doctor Certificate stating that Shri Radhakrishna Sharma was fit enough to do the work cannot be accepted, since the literal interpretation cannot be given on the Certificate by the Doctor. The entire circumstances will have to be seen particularly when the authorised representative himself has accepted the responsibility for not presenting the appeal in time.

4. The learned Counsel has relied upon the judgment of the Court in Kathiravan Pipes (P.) Ltd. v. CESTAT : [2007] 9 STT 208 and the judgment rendered in [W.P. Nos. 29609 to 29612 of 2008, dated 26-3-2009], wherein the Court has followed the earlier order and allowed the writ petitions. Hence, the learned Counsel for the petitioners submitted that all the writ petitions will have to be allowed giving an opportunity to the petitioners to agitate their rights before the first respondent, more so according to the learned Counsel the issue involved in the appeal has been covered by the judgment of the Apex Court.

5. Per contra, Shri T.R. Senthilkumar, learned Counsel appearing for the respondents submitted that in view of the specific alternative remedy, the writ petitions are not maintainable. The learned Counsel in support of his contention

relied upon the judgment in Nivaram Pharma (P.) Ltd. v. CEGAT : [2005] 2 M.L.J. 246 wherein the Division Bench of the Court has held that there shall be no short circuiting of statutory remedies.

6. Heard Mr. A.K. Jayaraj, learned Counsel appearing for the petitioners, Mr. T.R. Senthilkumar and Mr. K. Ramakrishna Reddy, learned Counsels appearing for the respondents.

7. The writ petitions have been filed as early as on 24-7-2007, 27-7-2007, 6-8-2007 respectively. The impugned orders have been passed on 30-5-2007. It is seen from the records that the notices have been ordered to the respondents in the year 2007 itself. When the writ petition is pending for more than 2 years and when the matter is to be taken up for final hearing, the Court is of the opinion that the question of alternative remedy need not be gone into at this stage. It is further to be seen what is sought to be challenged before the Court is the refusal of the first respondent in condoning the miscellaneous applications filed by the petitioners. Therefore, admittedly there is no adjudication on merits. The question of non-availing of the alternative remedy will have to be seen on the facts of each case. Since in the instant case, the only issue involved is the condoning of delay caused by the petitioners in preferring the appeal to the first respondent, the Court is of the opinion that the petitioners need not be driven to go for further appeal at this stage causing more delay.

8. The authorised representative of the petitioners have filed an affidavit in all the applications explaining the reasons for the delay in filing the appeal, the first respondent ought to have given anxious consideration to the reasons assigned in the said affidavit and also the various legal issues raised in the appeal. The rules to technicalities shall not stand in the way of a party getting the relief before the appropriate forum. What is important is that the substantial justice should be rendered between the parties by the competent forum. The procedures are hands made of justice to protect a party approaching the Court seeking redressal and not to destroy its rights. In the judgment in Kathiravan Pipes (P.) Ltd.' case (supra) has observed as follows:

4. I am of the view that the literal interpretation given on the certificate that the petitioner was advised to rest from 7-11-2005 to 17-11-2005 cannot be legally an appreciable finding. It is the opinion of the doctor that the petitioner was required to take rest for that period. That does not mean that on the expiry of the last date mentioned in the medical certificate, the person, who suffered certain viral infection, has immediately got rejuvenated with full rigour and has to attend all his office work.

5. It is well-settled principle of law that the technicalities and substantial justice are pitted against each other and the Courts would always lean in favour of substantial justice rather than technicalities for non-suiting the petitioner on the ground that the appeal has not been filed within the time stipulated in spite of the fact that the authorities are conferred with the power to condone the delay. Likewise, the limitation prescribed is not for destruction of statutory right and is only to give finality without protracting the matter endlessly.

6. Here is the case where the petitioner sought for condoning the delay of 25 days and a part of which has been explained by producing the medical certificate. Hence, this Court is of the view that the second respondent ought to have condoned the delay and allowed the petitioner to have their case decided on merits. But, that course has not been adopted and the order of the second respondent has also been confirmed by the Tribunal. This Court is of the view that the orders of respondents 1 and 2 are to be set aside and the delay in filing the appeal can be condoned.

7. Accordingly, the orders of respondents 1 and 2 are set aside. The delay in filing the appeal is condoned. The second respondent is directed to number, take the appeal on file and decide the issue on merits by following due process of law. The writ petition is allowed.

9. The said judgment has been considered by the subsequent order in W.P. Nos. 29609 to 29612 of 2008, dated 26-3-2009. It is seen that the said orders passed by the Court have become final and no appeals have been preferred against the said orders. Therefore, taking into consideration, the abovesaid judgments, the Court is of the opinion that the writ petitions will have to be allowed taking note of

the fact that the delay caused is not substantial.

10. However, admittedly there is some laxity on the part of the petitioners in filing the appeals in time. The petitioners were not diligent enough to file the appeals within the stipulated time even though the delay caused is not wilful or deliberate. Hence, taking into consideration the abovesaid factual position, the Court is of the opinion that the interest of justice would suffice that all the petitioners in each of the writ petitions will have to be directed to pay a sum of Rs. 1,000 to the said Legal Aid Authority. The said sum will have to be paid within a period of two weeks from the date of receipt of a copy of this order, failing which, the writ petitions would stand dismissed automatically. If the petitioners comply with the conditions imposed by the Court, the first respondent is directed to take the appeal on file and decide the same on merits in accordance with law within a period of three months from the date of receipt of copy of this order. The learned Counsel for the respondents Mr. T.R. Senthilkumar submitted that during the pendency of the writ petitions by way of interim orders, the petitioners have given bank guarantee and, therefore, the said bank guarantee will have to be directed to be kept alive by the petitioners. Considering the said request, the bank guarantees given by the writ petitioners already are directed to be kept alive till the disposal of the appeals.

11. With these observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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