

Sada Ram and anr. Vs. Chhotu Ram

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Court : Himachal Pradesh

Decided On : Dec-23-1955

Reported in : AIR1957HP26

Judge : Ramabhadran, J.C.

Acts : Workmen's Compensation Act, 1923 - Section 30(1); ;Limitation Act, 1908 - Section 5

Appeal No. : Civil First Appeal No. 2 of 1955

Appellant : Sada Ram and anr.

Respondent : Chhotu Ram

Advocate for Def. : H.C. Anand, Adv.

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

Disposition : Appeal dismissed

Judgement :

Ramabhadran, J.C.

1. In this appeal by two employers against an order awarding compensation by the Commissioner under the Workmen's Compensation Act, Bilaspur, learned counsel for the workman-respondent urged, at the hearing on 20-12-55 that the appeal

was incompetent, because the amount of compensation was deposited with the Commissioner, after the expiry of the period of limitation for filing an appeal.

2. In answer to that objection, an application under Section 5 of the Limitation Act, accompanied by an affidavit, was put in on behalf of the appellants soon afterwards. A further affidavit was filed on the 21st instant by Bhagat Ram, appellant. A reply to the application was filed by the respondent yesterday.

3. I have heard learned counsel for the parties and, in my opinion, for reasons to be stated shortly, no case is made out for condoning the delay in depositing the amount of compensation with the Commissioner and since the deposit was made after the expiry of the period of limitation for appeal, the appeal cannot be entertained.

4. The following dates are significant. The order under appeal was passed by the Commissioner Workmen's Compensation, Bilaspur, on 16-3-1955. Under Section 30(2), Workmen's Compensation Act, the period of limitation for an appeal to this Court is sixty days. Even if we leave out of consideration the time spent by the appellants in obtaining a copy of the Commissioner's order (18-3-1955 to 23-4-1955 i.e. 37 days), the period of limitation expired on 21-6-1955. It is true that the memorandum of appeal was presented on 7-5-1955, i.e., within the period of limitation. But it was not accompanied by a certificate of the Commissioner to the effect that the compensation amount had been deposited with him, as required by proviso (3) to Section 30(1) of the Act.

On 20-5-1955, the Deputy Registrar of this Court granted the appellants 10 days time to produce the necessary certificate, i.e., to the effect that the amount in question, had been deposited with the Commissioner. The papers were handed over to Mr. M.L. Sud, Advocate for the appellants, on 27-5-1955, vide serial no. 1432 of the Dak Bahi of the Senior Subordinate Judge's Court, Bilaspur. On 7-6-1955, i.e., after the expiry of the said period of 10 days' learned counsel for the appellants put in an application, which is to be found at page 3 of the appellate record, wherein he stated that he had sent intimation to his clients, but they were in the interior of the district and it appeared they had not received his letter.

Consequently, he asked for three weeks further time. The papers were again returned to the appellants' counsel by the order of the Registrar dated 16-6-1955. The amount was finally deposited with the Commissioner on 5-7-1955, i.e., 14 days after the expiry of the period of limitation (leaving, out of account, time spent in obtaining copy of the Commissioner's order).

5. Arguments of the learned counsel for the parties may be divided into two portions.

6. (A) In the first place, learned counsel for the appellants argued that since the appeal had been presented within the period of limitation the delay in furnishing the certificate could not affect limitation, nor the competency of the appeal. I am unable to accept this argument. As learned counsel for the respondent rightly pointed out, proviso (3) to Section 30(1) of the Act makes it clear that no appeal by an employer lies to this Court against the order of the Commissioner, unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the compensation amount has been deposited with him.

In this connection, Mr. Anand cited the following rulings (1) *Ohene Moore v Akesseh Tayee*, AIR 1935 PC 5 (A). That was an appeal from the judgment of the West African Court of appeal, Gold Coast Session, reversing an appellate decision of the Provincial Commissioner of the Western Province, by whom the judgment of the Native Tribunal of the Omanhene of Beyin had been reversed. Under the rules regulating appeals from Native Tribunals to the Provincial Commissioner, leave to appeal from Tribunal could not be granted unless and until the appellant had deposited a sum of money sufficient to defray the costs before the Tribunal. In the particular case, such deposit was not made. This was pointed out to the Provincial Commissioner, who brushed it aside as a technicality. Their Lordships of the Privy Council observed that:

'The objection lies in limine, in that the Provincial Commissioner had no jurisdiction at all; and therefore, the reference to these powers, unfortunately, is irrelevant to the question of the Provincial Commissioner being able to give relief. It is quite true that their Lordships, as every other Court, attempt to do substantial justice and to avoid technicalities; but their Lordships, like any other Court, are bound by

the statute law, and if the statute law says there shall be no jurisdiction in a certain event, and that event has occurred, then it is impossible for their Lordships or for any other Court to have jurisdiction.'

Under those circumstances, their Lordships held that the decision of the Provincial Commissioner was rightly reversed by the West African Court of appeal.

2. Kishen Lal L.R. of Mohan Lal v. Sohan Lal, AIR 1954 Raj 138 (B). There, a Full Bench of the Rajasthan High Court, while considering the rules applicable to appeals to the Ijlas-i-khas of Jodhpur State, observed that:

'Learned counsel next urged that the interpretation favoured by us would restrict the right of appeal to a very large degree in cases involving disputes as to jagir lands which in spite of their value being less than Rs. 5,000/- the ordinary appealable limit, were of considerable importance in the times to which these Ijlas-i-khas rules relate. To this, our short answer is and must be, that a right of appeal is a creation of statute, and it is to the statute alone, that we must look to determine whether such a right exists in a particular instance or not. Further, we see nothing unreasonable or wrong that a right of appeal to the highest Tribunal in the State was circumscribed by certain well defined restrictions.'

3. Ramnivas Khandelwal v. Mt. Mariam, AIR 1951 Pat 260 (C). There, the facts were that an appeal under Section 30 of the Workmen's Compensation Act was filed in time, but it was not accompanied by the certificate of the Commissioner. By the time the certificate was furnished, limitation had expired. Sarjoo Prasad J., doubted whether the non-production of the certificate, within the period of limitation, would result in the appeal becoming time-barred. He was pleased, however, to condone the delay under Section 5 of the Limitation Act on the ground that appeals under the Workmen's Compensation Act were not very common and the procedure of filing a certificate was not known to the counsel.

7. The facts of the present case are, however, different. Here, as already pointed out, the omission was pointed out to the appellants' counsel well within the period of limitation (i.e. 25 days before limitation was due to expire), but still the certificate was not produced within time. Therefore, the Patna ruling would not help the

appellants.

8. In view of what has been said above, I am of the opinion, having regard to Proviso (3) to Section 30(1) of the Act, that a memorandum of appeal by an employer presented within the period of limitation, but unaccompanied by a certificate of deposit issued by the Commissioner, will not save limitation.

9. B. We now come to the application under Section 5, Limitation Act. The only ground given in the application and in the accompanying affidavit is that the appellants were not aware of the legal requirements and it was due to a 'bona fide mistake that the deposit was not made within the period of limitation. The respondent, in his reply, maintains that the omission to make the deposit was mala fide and deliberate. In this connection, Mr. Anand pointed out that the defect was brought to the notice of the appellants' counsel by the Deputy Registrar of this Court on 27-5-1955, i.e., within the period of limitation, but no steps were taken to make the deposit within time. Mr. Sud cited, firstly, *Karali Charan v. Apurba Krishna*, AIR 1931 Cal 298 (D), where a Division Bench of that High Court indicated that:

'The language of Section 5, as it stands, is capable of only one construction, namely that the right to present an appeal extends upto the very lastday and, if on account of sufficient cause, it could not be presented on the last date and if the Court is satisfied with the existence of such a cause the time may be extended.'

'Where therefore an appeal is presented somedays after the period of limitation has run out, it is only the delay of those days that must beexplained in making out a sufficient cause for the extension of time. The antecedent in-action or negligence of the appellant should not be taken into consideration.'

Secondly, *Kayambu Pillai v. Court of Wards*, AIR 1942 Mad 170 (E), where a learned Judge of that High Court observed that:

'The words 'sufficient cause' in Section 5 must be liberally , construed so as to advance substantial justice, particularly when no negligence, nor in action nor want of bona fides is imputable to the applicant.'

10. Mr. Anand for the respondent contended that these rulings, if anything, go against the appellants, because delay can be condoned under Section 5, only when the appellants can show that they have not been guilty of negligence or inaction or want of bona fides. Mr. Anand pointed out that the appeal was filed by a senior advocate of this Court. In the heading of the appeal, reference is made clearly to Section 30 to the Act.

A bare perusal of the section would have shown to anyone, even a layman, that no appeal by an employer lay unless the amount in question was first deposited with the Commissioner. It was urged that the delay could have been easily avoided if the appellants had taken care to consult their lawyer as to what steps were to be taken in connection with the appeal. Reference was made, in this connection, to *Ashutosh Bhadra v. Jatindra Mohan*, AIR 1954 Cal 238 (P), where Sinha J. observed that:

'The existence of 'sufficient cause' is a condition precedent for the exercise of discretion under Section 5. 'Sufficient cause' must mean a cause beyond the control of the party invoking the aid of the section. A cause for delay which a party could have avoided by the exercise of the care and attention cannot be a sufficient cause. In other words, the Court must be able to say, having regard to the facts and circumstances of the case, that the delay was reasonable. A cause arising from the negligence of the party cannot be a 'sufficient cause' within the meaning of Section 5.'

11. In this state of affairs, I am constrained to remark that the appellants have been very negligent and acted without due care and attention. They did not wake up even after being asked to furnish the certificate. Consequently, no indulgence can be shown to them nor can delay be condoned under Section 5.

12. The result is: the appeal cannot be entertained. It is, accordingly, rejected with costs.