

Vijai Singh Vs. Samar Singh and Another

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Court : Allahabad

Decided On : Jan-21-2011

Judge : Sibghat Ullah Khan, J.

Appeal No. : WRIT - C No. - 1281 of 1998

Appellant : Vijai Singh

Respondent : Samar Singh and Another

Advocate for Def. : S.C.; A.K. Sachan, Advs

Advocate for Pet/Ap. : Dharam Pal Singh; Avinash; Rajesh Tandon, Advs

Judgement :

1. Heard learned counsel for the parties.
2. This writ petition is directed against order dated 29.10.1997 passed by District Registrar, Jalaun in an appeal under Section 72 of Registration Act 1908 Samar Singh vs. Vijai Singh. Through the impugned order 3 months and 24 days delay in filing appeal has been condoned. The sale deed was refused to be registered by the Sub Registrar through the order dated 12.2.1996. According to Samar Singh appellant respondent no.1 in this writ petition he got the information of the refusal order on 24.2.1996. There is no dispute that limitation of 30 days to file appeal under Section-72 of Registration Act starts from the date of knowledge. Appeal was filed on 18.6.1996. However, delay condonation application was filed on

16.12.1996. In the said application it was stated that appellant respondent no.1 remained ill from 27.2.1996 to 17.6.1996. This allegation of illness has been found to be correct by the District Registrar, Jalaun at Orai.

3. The main point argued by learned counsel for the parties and required to be decided in this writ petition is as to whether provision of condonation of delay provided under Section-5 Limitation Act 1963 is applicable to the appeals under Section 72 of Registration Act or not. Section-72 of Registration Act is quoted below:

" 72. Appeal to Registrar from orders of Sub- Registrar refusing registration on ground other than denial of execution.-

(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Sections 4,5 and 29 of Limitation Act 1963 are quoted below:

4. Expiry of prescribed period when court is closed. Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be

instituted, preferred or made on the day when the court re-opens.

5. Extension of prescribed period in certain cases. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

29. Savings. (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872. (9 of 1872.)

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882, (5 of 1882.) may for the time being extend."

4. From a combined reading of the above sections of Limitation Act 1963 it is quite clear that for the applicability of Sections 4 to 24 of the Limitation Act to any proceedings twin conditions must be satisfied. The first is that there is a special law prescribing period of limitation different from the period prescribed by the

schedule to the Limitation Act and the special law does not expressly or by necessary implication exclude the applicability of Limitation Act 1963. This condition is satisfied as Registration Act is a special law and period of 30 days for filing appeal under Section 72 of the Act is provided and there is nothing either in Section 72 of the Registration Act or any other provision of the said Act which expressly or by necessary implication excludes applicability of Sections 4 to 24 of Limitation Act.

5. The second condition is that the forum where proceedings in which benefit of any of the Sections from 4 to 24 of the Limitation Act (Section 5 in the instant case) is sought, is a court. It is evident from the word 'court' used in Section 4 as well as Section 5 of Limitation Act. District Registrar is not court. Accordingly as second condition is not satisfied hence Limitation Act 1963 including its Section-5 is not applicable. In this regard reference may be made to the following Supreme Court authorities;

"Nityanand M. Joshi v. Life Insurance Corporation of India" AIR 1970 SUPREME COURT 209.

In this authority it was held that application under Section 33-C-(2) of Industrial Disputes Act, to the Labour court is not covered by Article 137 of the Limitation Act as the Limitation Act itself does not apply to the proceedings before the Labour court for the reason that Labour court is not court. Para-3 of the said authority is quoted below:

"3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Again under Section 5

it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

"Sushila Devi v. Ramanandan Prasad" AIR 1976 SUPREME COURT 177

In this authority it has been held that Collector to whom application under Section-3 of Kosi Area Act is made, is not a court hence he has got no power to condone the delay in filing application. Relevant portion of para-6 of the said authority is quoted below:

"6. The third ground on which the decision of the High Court rests relates to the applicability of Section 5 of the Limitation Act, 1963. We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965 by the first respondent. Under Section 5 of the Limitation Act an appeal or application " may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period." The Collector to whom the application was made was not a court, though Section 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise. We therefore think that the High Court misdirected itself in referring to Section 5 of the Limitation Act."

6. Thereafter there are several other authorities of the Supreme Court taking similar view. The two latest authorities of the Supreme Court reported in A.I.R. 2010 are discussed below:-

7. The first is Bhagwan Dass vs. State of U.P. A.I.R. 2010 S.C. 1532. In this case it has been held that Collector while exercising jurisdiction under Section-18 of Land Acquisition Act is not a court hence it has got no power to condone the delay under Section-5 Limitation Act 1963 in filing application for making reference as Limitation Act 1963 does not apply. Para-7 of the authority is quoted below:

"7. In Officer on Special Duty (Land Acquisition) & Anr. v. Shah Manilal Chandulal & Ors. [1996 (9) SCC 414], this Court held that in view of the special limitation provided under the proviso to section 18 of the Act, section 29(2) of the Limitation Act, cannot be applied to the proviso to section 18 of the Act; and therefore, the benefit of sections 4 to 24 of Limitation Act 1963, will not be available in regard to applications under section 18(1) of the Act. It was also held that as the Collector is not a court when he discharges his functions as a statutory authority under section 18(1) of the Act, section 5 of the Limitation Act 1963 cannot be invoked for extension of the period of limitation prescribed under the proviso to section 18(2) of the Act. As the Collector is not a civil court and as the provisions of Section 5 of the Limitation Act, 1963 have not been made applicable to proceedings before the Collector under the Act, and as there is no provision in the Act enabling the Land Acquisition Collector to extend the time for making an application for reference, the Collector cannot entertain any application for extension, nor extend the time for seeking reference, even if there are genuine and bonafide grounds for condoning delay. This view was reiterated in Steel Authority of India Ltd. vs. S.U.T.N.I. Sangam and others [2009 (16) SCC 1]. Therefore, the observation of the High Court that an application for condonation of delay could have been made by the person interested, is incorrect.

We should however notice that there is an apparent inconsistency in two observations of this Court in S.U.T.N.I. Sangam (supra). In the earlier part of the decision, this Court observed : "The

proceedings under the Land Acquisition Collector is of an administrative nature and not of a judicial or quasi judicial character." However, in a latter part of the said decision (at para 75 of the report), this Court observed : "Land Acquisition Collector is a statutory authority. The proceeding before the Land Acquisition Collector is a quasi-judicial proceeding." As the said inconsistency has no bearing upon the issue on hand, we do not propose to consider it in this case, but leave the clarification to be done in an appropriate decision."

8. The next is Om Prakash v. Ashwani Kumar Bassi A.I.R. 2010 S.C. Page 3791 . In the said authority it has been held that Rent Controller under East Punjab Urban Rent Restriction Act is not court hence he cannot condone delay in filing application for leave to contest. In the said authority reliance was placed upon A.I.R. 2003 S.C. 4591 which took the same view in respect of competent authority under Maharashtra Rent Control Act 1999.

9. Learned counsel for the petitioner has also cited an authority of this court reported in Shiv Charan Das vs. Rukmani Devi A.I.R. 1975 All. 354 taking the view that Limitation Act 1963 does not apply to proceedings before Registrar under Registration Act.

10. Accordingly, it is held that District Registrar had no jurisdiction to condone the delay in filing the appeal even if he was of the view that a very good ground for condonation of delay had been made out. Writ petition is therefore allowed. Impugned order is set aside.

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