

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:31.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.515 of 2015
and
M.P.No.1 of 2015

Madura Coats Private Limited,
Papavinasam Mills Post,
Vikramasingapuram,
Ambasamudram Taluk.

... Appellant/Petitioner

Vs.

1.The Presiding Officer,
Industrial Tribubal,
Chennai - 600 104.

2.T.Paul

3.M.Chandrasekar

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act,
against the order of this Court dated 09.02.2015 made in W.P.No.20401
of 2011.

Writ Petition filed under Article 226 of the Constitution of
India to issue a Writ of Certiorari to call for the records from the
file of the first respondent in Misc. Application No.116 of 2007 in
Complaint No.1 of 2006, Misc. Application No.117 of 2007 in Complaint
No.2 of 2006, Misc.Application No.145 of 2007 in Unnumbered
A.P.No.-----2007 and in Misc. Application No.146 of 2007 in
Unnumbered A.P.No.-----2007 and to quash the common order passed
therein dated 15.9.2010.

For Appellant : Mr.S.Jayaraman

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant/Management has focussed the instant intra-Court Writ Appeal as against the order dated 09.02.2015 in W.P.No.20401 of 2011 passed by the Writ Court.

2.The Writ Court, while passing the impugned order on 09.02.2015 in W.P.No.20401 of 2011, in paragraph 8, had observed the following:

"8.In the case on hand, the petitioner has not shown any cause for condoning the inordinate delay of 512 days in representing the papers. In the absence of any reason given by the petitioner for condoning the inordinate delay, the ratio laid down by the Apex Court in the above referred judgment does not apply to the facts and circumstances of the present case. For the inaction on the part of the management, the workers cannot be penalised, that too, after several years. In the absence of any acceptable reason given by the management, the Industrial Tribunal has rightly dismissed the applications." and resultantly, dismissed the Writ Petition without costs.

3.According to the Learned Counsel for the Appellant/ Management, the impugned order of the Writ Court dated 09.02.2015 in W.P.No.20401 of 2011 is vitiated by error apparent on the face of record and further the said order suffers from wrongful exercise of jurisdiction.

4.The Learned Counsel for the Appellant contends that both the Writ Court as well as the Industrial Tribunal had failed to appreciate that the Appellant/Management had bona fide complied with the requirements and conditions precedent to Section 33(2)(b) of the Industrial Disputes Act, 1947.

5.Advancing his arguments, the Learned Counsel for the Appellant submits that the 1st Respondent/Tribunal should have appreciated the fact that the Appellant/Management sent the Form-T to both the Respondents 2 and 3 in accordance with the Industrial Disputes Act more particularly Section 33(2)(b) of the Act since both of them were dismissed for proved misconducts in domestic enquiries conducted in accordance with the principles of natural justice with effect from 27.07.2005 and 29.07.2005 respectively.

6.The stand of the Appellant is that the 1st Respondent/Tribunal had failed to appreciate that the approval petitions (Form - T) were sent by the Appellant on 12.08.2005 which was returned by the 2nd Respondent as 'unclaimed' and with an endorsement 'information delivered' and thus, the 2nd Respondent had sufficient knowledge about the filing of approval application under Section 33(2)(b) of the Industrial Disputes Act.

7.The Learned Counsel for the Appellant brings it to the notice of this Court that the 1st Respondent/Tribunal had failed to appreciate the fact that the approval application (Form-T) was sent in respect of the 3rd Respondent by the Appellant/Management 12.08.2005 and received by the 3rd Respondent on 13.08.2005 itself and the one month's wages which was sent on 09.08.2005 was also received on 13.08.2005 and as such, the 3rd Respondent had sufficient knowledge of the filing of the approval petition.

8.The grievance of the Appellant is that both the Writ Court as well as the 1st Respondent/Tribunal should have seen that the the relevant Section viz., Section 33(2)(b) of the Industrial Disputes Act contemplates only 'making of an application' which means filing of petition which was done in the present case and in fact, the Respondents 2 and 3 are also aware of the same and still filed the complaints under Section 33(A) of the Industrial Disputes Act as if the Appellant/ Management had violated Section 33.

9.Yet another plea of the taken on behalf of the Appellant is that the 1st Respondent/Tribunal should have seen that on the date of filing of the complaints by the workmen, the Complaint Nos.1/2006 and 2/ 2006 i.e. on 16.08.2005, the Appellant/Management had already made the Application under Section 33(2)(b) of the I.D. Act and therefore, the complaints are not sustainable.

10.Expatiating his contention, the Learned Counsel for the Appellant projects an argument that the 1st Respondent/Tribunal should have seen that though the Approval Petitions were filed 12 days after the dismissal, the same cannot be rejected at the threshold itself without providing an opportunity to the Appellant/Management to explain the actual facts as to whether there is a delay in filing the application and whether there are tenable reasons for the same etc.

11.The Learned Counsel for the Appellant relies on the decision of the Hon'ble Supreme Court in The Collector, Land Acquisition, Anantnag V. M.S.T.Kathiji , AIR 1987 SC 1353, wherein it is categorically held that the High Court and the lower Court must take a liberal view in the matters of condoning the delay in filing

petition and that as against the substantial justice to be done technical objections of delay cannot be entertained since refusing the condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

12.The Learned Counsel for the Appellant contends that the Writ Court as well as the 1st Respondent/Tribunal should have all the more seen that there is no impediment in law or prejudice to adjudicate the Approval Petition and complaints jointly and ought not to have dismissed the same. Also that, it is represented on behalf of the Appellant that the Writ Court as well as the 1st Respondent/Tribunal should have heard both the complaints and the Approval Petitions on merits in a 'regular enquiry' before the Court and not rejected it at the early stage itself.

13.Finally, it is the submission of the Learned Counsel for the Appellant that both in law as well as the principles of natural justice, the Appellant/Management ought to have been given an opportunity to be heard on merits, otherwise they would not have any chance whatsoever to establish their case on merits.

14.It is to be noted that in M.A.No.145 of 2007 in unnumbered Approval Petition No. .../2007 (Diary No.771 of 2005) and in M.A.No.146 of 2007 in unnumbered Approval Petition No. .../2007 (Diary No.772 of 2005) filed by the Appellant/Management under Section 11 of the Industrial Disputes Act, 1947, it was stated that the papers were returned by the office for complying certain returns and also granted two weeks time for representation on 22.02.2006 and that the papers were also taken back for compliance. Further, it was mentioned that the returned papers were misplaced by the deponent of the affidavit (Industrial Relation Manager of the Appellant) and the same could be traced only now and that the returns were complied with and the same was represented now with a delay of 512 days, which only due to the aforesaid reasons and it was neither wilful nor wanton. As such, the delay of 512 days in representing the papers may be condoned.

15.It is to be pointed out that consequent to the dismissal of workers from service on 27.07.2005, the Appellant/Management sent a petition under Section 33(2)(b) of the Industrial Disputes Act for an approval to the 1st Respondent/Industrial Tribunal, Chennai on 09.08.2005. In this regard, there was a delay of 12 days in preferring the Approval Petitions. Admittedly, the said petitions were returned for complying with certain defects. Subsequently, the Appellant/ Management had represented the papers with a delay of 512 days only on 03.08.2007.

16.It is to be pointed out that Section 5 of the Limitation Act, 1963 enjoins that only a Court to admit an Appeal or an Application after the expiry of the prescribed period on sufficient cause being shown for the delay. As a matter of fact, the proof of 'sufficient cause' is a condition precedent to the exercise of jurisdiction, under Section 5 of the Limitation Act.

17.It cannot be gainsaid that hardship is no reason for condoning the delay in either projecting an application or filing an appeal as the case may be. Although no hard and fast rule can be laid in regard to the condonation of delay by a Court of Law, yet, the discretion has to be exercised judiciously. In fact, the power to comply the term 'sufficient cause' under Section 5 of the Limitation Act is to be applied by a Court of Law in a meaningful manner to subserve the ends of justice.

18.Admittedly, 'condonation of delay' is not an empty formality since it creates a valuable right to the other side. The existence of a just or sufficient cause for not filing the proceeding in time is a condition which should be satisfied before a Court of Law and the Court can exercise its judicial discretion either to grant or refuse to grant an extension of time. Moreover, if the condition is not satisfied, there is no scope for allowing the condonation of delay application/ petition, in the considered opinion of this Court.

19.In the matter of condonation of delay, the conduct of a certain party is a relevant factor. In reality, the Law of Limitation has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds as per decision of the Hon'ble Supreme Court in P.K.Ramachandran V. State of Kerala, AIR 1998 SC 2276. After all, the proceedings relating to condonation of delay is not an inter parte proceedings. Also that, 'Condonation of Delay' is not a matter of right but a discretion of Court. However, such discretion ought not to be exercised in an arbitrary, and capricious fashion. The judicial discretion to condone the delay in question is like any other discretion to be exercised with utmost care, caution and circumspection according to justice and sound Judgment. What matters is not the 'length and breadth of delay' but 'the sufficient of the cause'.

20.At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in H.Dohil Constructions Company Private Limited V. Nahar Exports Limited and another, (2015) 1 Supreme Court Cases 680 at Special page 681, wherein in paragraph Nos.19 & 24 it is observed as follows:

"19.It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the party concerned or whomsoever was entrusted with the filing of the papers into the Registry. But when an enormous delay of nearly five years occurred in the matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the party concerned from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals.

24.The failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona-fides in its approach."

Also, in the aforesaid decision, at page 682, in paragraph 25, it is held as follows:

"25.Thus, there is total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days

respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained."

21.As far as the present case is concerned, the Appellant/ Management, in M.A.Nos.145 & 146 of 2007 in unnumbered Approval Petition Nos. .../2007 (Diary Nos.771 & 772 of 2005), through its deponent viz., Industrial Relation Manager, had stated that 'In the above matter papers were returned by the office for complying certain returns and also granted two weeks time for representation on 22.02.2006. The papers were also taken back for compliance. However the returned papers were misplaced by me in the office and the same could be trace only now. The returns are complied with and the same is being represented now. A delay of 512 days have occurred in representing the papers which is only due to the above said reasons and it is neither wilful nor wanton', which was not accepted by the 1st Respondent/Tribunal as well as the Writ Court. In fact, the 1st Respondent/Tribunal, while passing the common order on 15.09.2010 in M.A.No.116 of 2007 in Complaint No.1 of 2006, M.A.No.117 of 2007 in Complaint No.2 of 2006, M.A.No.145 of 2007 in unnumbered A.P.No. .../2007 and M.A.No.146 of 2007 in unnumbered A.P. No. .../2007, had stated that '... The lethargy and inaction on the part of the management in not taking any serious efforts to prosecute the approval application would only betray the intention of the management to file an application perfunctorily lacking, the will to bring it to its logic end. To my mind it does not look as though the conduct of the management would form part of the same transaction as laid down in the Judgment of Apex Court. I am of the view that the application for condonation of delay in representation do not deserve to be allowed.' Also, the Writ Court, in paragraph 8 of the impugned order in the Writ Petition, had opined that 'In the case on hand, the petitioner has not shown any cause for condoning the inordinate delay of 512 days in representing the papers.'

22.Following the recent decision of the Hon'ble Supreme Court in (2015) 1 Supreme Court Cases 680 cited supra, this Court comes to an inevitable and inescapable conclusion that the Appellant/ Management had not shown sufficient cause for condoning the delay of 512 days in representing the papers and to put it succinctly, the reasons assigned by the Appellant/Management that 'However, returned papers were misplaced in the office and the same can be traced only now' are far from satisfactory and they are not justifiable reasons for the delay that had occurred in question. In fact, Law aids a person who is vigilant and diligent in prosecuting the proceedings and not for one who slept over its rights. Viewed in that perspective, this Court opines that the delay of 512 days in issue is not based on bona fide

and acceptable reasons. Therefore, this Court is not inclined to take a lenient and liberal view in the matter based on the facts and circumstances of the present case in an integral manner. Looking at from any angle, the Writ Appeal fails.

23.In the result, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the order passed by the Writ Court in W.P.No.20401 of 2011 dated 09.02.2015 as well as the common order dated 15.09.2010 passed by the Industrial Tribunal in M.A.No.116 of 2007 in Complaint No.1 of 2006, M.A.No.117 of 2007 in Complaint No.2 of 2006, M.A.No.145 of 2007 in unnumbered A.P.No. .../2007 and M.A.No.146 of 2007 in unnumbered A.P. No. .../2007 are hereby affirmed by this Court for the reasons assigned in this Writ Appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.

+lcc to Mr.S.Jayaraman, Advocate, S.R.No.17907

W.A.No.515 of 2015

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