

HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 3769 OF 2001

ORDER:

This writ petition is filed under Article 226 of the Constitution of India. The writ petitioner prayed for issuance of a writ of *Certiorari*, to set-aside the order passed by the 1st respondent. The petitioner has also sought for relief of suspension of operation of order, dated 11-05-1998, passed by the 2nd respondent, pending writ petition.

The brief facts of affidavit in support of his averments in the writ petition are as follows:

One of the partners of the petitioner firm filed this affidavit. The petitioner is a partnership firm functioning under the name and style of '*Bommana Textiles*'. Its head office was at Rajahmundry. The petitioner has commenced its business during December, 1994. The 2nd respondent has issued a notice alleging that the petitioner establishment is a branch office of the other '*Bommana Brothers*' establishments, and claimed contributions from the very first day of commencement of the establishment. One of the partners of the firm has got many business concerns, under the name and style of '*Bommana Silks*' and '*Bommana Silk Mandir*' in various places in Andhra Pradesh. The said establishments have no connection with the present partnership firm.

The petitioner had brought to the notice of the 2nd respondent by a letter dated 23rd August, 1996 that the petitioner is a new establishment. The petitioner had also produced the necessary documents in support of his contentions before the 2nd respondent. In spite of the same, the 2nd respondent has passed orders dated 11th May, 1998 stating that the petitioner establishment at Chirala is not an independent unit and, therefore, it is not entitled to infancy protection, and directed the petitioner to pay a sum of Rs.1,03,324.64 p.s., for the period from 12/94 to 05/96, and a further sum of Rs.1,44,438/- for the period from 06/96 to 01/98.

The 2nd respondent has passed *ex parte* orders on 16-07-1996. The petitioner has filed an application to set aside the said *ex parte* order, as order was not passed on merits, on hearing the petitioner. On that, the 2nd respondent passed the order, dated 11-05-1998. In the meanwhile, the writ petitioner fell seriously ill and had to take prolonged treatment for suspected cancer. In view of the same, he could not attend to the business to take any further action questioning the order dated 11-05-1998. During that period, the writ petitioner's father fell sick and expired on 23-03-1999. In the meanwhile, the other managing partner withdrew from the partnership in April, 1999.

The writ petitioner had filed an appeal before the 1st respondent along with the delay condone petition. The 1st respondent, without giving any notice of hearing and without giving any opportunity, dismissed the delay condone petition. Aggrieved by the order passed by the 1st respondent, dated 10-08-1999, the

petitioner has filed W.P. No.24004 of 1999. The said writ petition was disposed of *vide*, order dated 19-11-1999, directing the 1st respondent to consider the delay condone petition afresh, in accordance with law. Thereafter, the 1st respondent passed the impugned order on 26-12-2000, dismissing the delay condone petition, on the ground that the appellate authority has no power to condone the delay, in filing the appeal, if the delay is more than 60 days. Therefore, the petitioner has filed the present writ petition, questioning the order made in ATA-1(39)99, dated 26-12-2000.

Grounds of the writ petition are as follows:

- The impugned orders made by 1st and 2nd respondents are contrary to law and facts. The orders are liable to be set aside;
- The 1st and 2nd respondent's have not considered the explanation offered by the petitioner for the delay in filing the appeal;
- The 2nd respondent accepted the contentions raised by the officers of the Department without any basis and passed an order dated 11-05-1998. The said order is perverse and is liable to be set aside; and
- The contentions raised in the above affidavit are to be considered in the grounds of appeal, and the orders may be set aside.

The writ petitioner has sought for a writ of *certiorari*. In the affidavit the petitioner had raised several grounds for setting-aside the order made in the Application ATA-1 (39)99, dated 26.12.2000. The ATA-1 (39)99, filed before the Employees Provident Fund Appellate Tribunal, New Delhi, 1st respondent herein, wherein the 1st respondent has passed the order dated 26.12.2000 rejecting the

application for condonation of delay, holding that it was beyond the power of the Tribunal to condone the delay occurred in filing the Appeal.

The order of the 1st respondent reveals that the Tribunal did not decide the Appeal on merits. It has only decided on the point of limitation. The Tribunal thoroughly felt that the appeal was barred by limitation and therefore it was unnecessary to go into the merits of the Appeal.

It was stated in the order of the Tribunal as follows:

“.....The Hon’ble High Court by order dt.10.08.1999 has directed the Tribunal to dispose the Application for condonation of delay after notice to the parties within the time specified by the Hon’ble Court. The order of the Hon’ble High Court was put up before the Presiding Officer by the Registrar only on 10th November, 2000. Notice was issued to both the parties for hearing at Hyderabad Camp on 26th December, 2000.

Si J. Viswanatha Reddy, Advocate for the Appellant

And

Si R.N. Reddy is present for the Regd. P.F. Commissioner.”

It was further held as follows in the last Para of the order of the Tribunal:

“To my mind the objection raised by the learned counsel for the respondent goes to the root of jurisdiction and the learned counsel for the appellant could not show me any Authority that Tribunal has power to condone any amount of delay irrespective of the limitations placed by the procedure rules, 1997. I have no option but to reject the application for condonation of delay as it is beyond the power of this

Tribunal to condone the delay occurred in filing this appeal. The application for condonation of delay is rejected and the Appeal is rejected, as barred by time."

The writ petitioner being aggrieved by the order, dated 26.12.2000, passed in ATA-1(39)99, has preferred this writ petition on two grounds; firstly to condone the delay in preferring the Appeal and secondly to consider the merits of the Appeal.

The points that arise for consideration in this writ petition are:

1. Whether the impugned order passed by the Tribunal is illegal and perverse? If so, whether the merits of the petition can be gone into in this writ petition?
2. Whether the writ petitioner is entitled for condonation of delay?

POINT Nos.1 and 2: Both the points go together. At this stage, I feel it appropriate to refer to the findings of the Tribunal herein:

"Section 7-I of the E.P.F. & M.P. Act, 1952 provides that any person aggrieved by a Notification issued by the Central Government or an order passed by the Central Government or any Authority under the provision to Sub-Section (3) Sub-Section (1) of Section 7-A or Section 7-B accept an order rejecting the application for review referred to in sub-section (5) thereon or Section 7-C or Section 14-B may prefer an appeal to a Tribunal against such notification or order."

The Tribunal on consideration of the provision under Section 7(2) of the E.P.F. and M.P. Act, 1952 (for short, 'the Act'), has observed that the Appeal was filed beyond the limitation of sixty days. It was also observed therein that the delay was one year

sixteen days which cannot be condoned by the Tribunal, as per the provisions of the Act. On the ground of limitation the Tribunal had dismissed the Appeal.

Since the petitioner has raised the limitation as one of the grounds, first of all he has to establish that the delay can be condoned even after expiry of statutory period of sixty days on sufficient ground. As per the provision under Section 7(2) of the Act, the Tribunal may, if it is satisfied, that the writ petitioner was prevented by sufficient cause from preferring the Appeal within the prescribed period, extend the said period by a further period of sixty days. Therefore, there is no power vested with the appellate authority to condone the delay beyond the period specified in Section 7(2) of the Act. Therefore, the 1st respondent-Appellate Tribunal has rightly dismissed the Appeal, as it was filed beyond the period of limitation.

In view of the foregoing reasons, since the writ petitioner could not come up with any provision for condonation of delay beyond the period mentioned in Section 7(2) of the Act, it is not necessary to go into merits of the writ petition at this stage. Hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed.

As a sequel, *interim* order shall stand vacated and, pending miscellaneous petitions, if any, shall stand dismissed as infructuous. No order as to costs.

G. SHYAM PRASAD, J

Date:14.02.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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