

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.P.No.10352 of 2021
in
W.A.Sr.No.55814 of 2021

A.M. Shanmugasundaram ... Petitioner/Appellant

Vs.

1. The Special Deputy Commissioner,
Labour, The Appellate Authority,
Under the Tamil Nadu Shops and
Establishment Act, 1947,
Teynampet, Chennai - 6.

2. The Tamil Nadu State Apex Co-operative Bank Ltd.,
Rep. by its Special Officer,
4, N.S.C. Bose Road,
Chennai - 1.

...Respondents/Respondents

Prayer in C.M.P. No.10352 of 2021: Civil Miscellaneous Petition filed under Section 5 of Limitation Act to condone the delay of 2937 days in preferring W.A.Sr.No.55814 of 2021.

Prayer in W.A.Sr.No.55814 of 2021: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 30.01.2012 in W.P.No.22881 of 2007 and consequently direct the first respondent to decide the appeal preferred by the petitioner under section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 on its merits and in accordance with law and pass orders within the time frame stipulated by this Court.

Prayer in W.P.No.22881 of 2007: Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 30.06.2006 in TSE No.1/1A/1/2006 passed by the 1st respondent Quash the same and consequently direct the first respondent to take up the Petitioner main appeal on file and decide the same on merits, within a specified time as may be fixed by this court by condoning the delay of 437 days.

For Petitioner : Mr.Balan Haridas
For Respondent-1 : Court
For Respondent-2 : Mr.A.Selvendran

JUDGMENT

[Judgment of Court was delivered by PUSHPA SATHYANARAYANA, J.]

W.P.No.22881 of 2007 was filed by the appellant/writ petitioner to quash the proceedings of the first respondent dated 30.06.2006 and consequently to direct the first respondent to take up the main appeal on file by condoning the delay of 437 days and decide the same on merits.

2. The said writ petition was dismissed by this Court on 30.01.2012 holding as follows:

" 9. One can understand if a person has moved other forums or before the correct forum where the remedy may be time consuming, then naturally, all those period of delay can be excluded, but in the present case right from day one the petitioner was aware of his legal remedies as he was holding the status of Branch Manager and the Special Officer himself advised him to prefer an appeal under Section 153 of the Tamilnadu Co-operative Societies Act. It is the admission of the petitioner himself that his family members and his relatives persuaded him not to avail any statutory remedies, if that is so, the petitioner has to suffer for such wrong advise or wrong pressure on him. It is not the case that he is not aware of legal rights and subsequently, if he came to know about his rights then leniency can be shown. But in this case, even the materials produced before the authority does not satisfactorily explain the reasons for the delay and this Court does not find any ground to interfere with the findings rendered by the authority under the Tamilnadu Shops and Establishment Act, 1947. Hence, the writ petition stands dismissed. There will be no order as to

costs."

Against the said order, the present appeal is filed with a delay of 2937 days.

3. The reason assigned by the appellant / writ petitioner is that the surcharge proceedings were pending in appeal in C.M.A.No.12 of 2009, in which, the orders were passed on 24.06.2011. Thereafter, yet another surcharge proceedings were initiated against the appellant in another appeal in C.M.A.No.1 of 2012, which was allowed on 14.11.2017.

4. The pendency of the surcharge proceedings, etc. is not a bar to file an appeal within the prescribed time. When the writ petition was dismissed on 30.01.2012 itself, the appeal ought to have been filed within the time, but the same is filed with a delay of 2937 days and no just and sufficient cause was given, explaining the enormous delay in filing the above appeal. Presuming that the reason given is pendency of the surcharge proceedings, it is un-acceptable, as it cannot be a bar for filing the writ appeal within the time. Therefore, the petition filed for condonation of delay is dismissed bereft of any merit. Consequently, the Writ Appeal is rejected at the S.R. stage itself. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Special Deputy Commissioner,
Labour, The Appellate Authority,
Under the Tamil Nadu Shops and Establishment Act, 1947,
Teynampet, Chennai - 6.

2. The Special Officer,
Tamil Nadu State Apex Co-operative Bank Ltd.,
4, N.S.C. Bose Road,
Chennai - 1.

+1cc to Mr.A.Selvendran, Advocate, S.R.No.44520

C.M.P.No.10352 of 2021
in
W.A.Sr.No.55814 of 2021

MG(CO)
SU(24/09/2021)