Serial No. 15.
Regular List. .

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

OWP 1760/2012 IA(1/2012[2852/2012]).

IMTIYAZ RAHIM SHAH.

…Petitioner (s)

Through: Mr. Zia Ahmad Shah, Advocate.

VERSUS

B.O.C.A. AND OTHERS (SMC.

…Respondent(s)

Through: Mr. Moomin Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER

23.02.2024

01. The petitioner has filed the present petition for quashing the Order dated 18th October, 2012, passed by respondent No.4, whereby the statutory appeal preferred by petitioner titled "***Imtiyaz Rahim Shah Vs Chairman BOCA & Ors"*** against Order dated 4th December, 2008, issued by respondent No.2 under Section 7 (3) of Building Operation Controlling Act, was dismissed for being time barred.

02. It is stated that the statutory appeal was filed by the petitioner on 15th December, 2008, and in the said appeal it was stated that the notice was served upon the appellant on 9th December, 2008, as such, the period of limitation for filing the appeal commenced from the date when the notice was served upon the petitioner. It was also stated in the memo of appeal that from 9th to 10th December, 2008, there were holidays on account of Eid-ul-Azha and from 11th to 14th December, 2008, there was continuous curfew imposed by the State. It is stated in the petition that

from 12th to 14th December, 2008, the Tribunal was closed because of the restrictions imposed by the District Magistrate on the free movement of the people.

03. The case projected by the petitioner in the present petition is that the learned Tribunal without appreciating the cause projected by the petitioner for filing the appeal on 15th December, 2008, dismissed the appeal on technical grounds only.

04. Mr. Moomin Khan, learned counsel for the respondents submits that since only issue of law is involved, as such, there is no requirement of filing the response.

05. The present petition is taken up for final disposal. More particularly in view of the submissions made by the learned counsel for the respondents recorded in Order dated 7th December, 2021, that the response was not required as issue involved in the present petition was only legal.

06. Learned counsel for the petitioner submitted that the learned Tribunal has failed to exercise the jurisdiction vested in it and has decided the appeal without appreciating the contention raised by the petitioner, more particularly when there was no denial by the respondents before the Tribunal that the appeal could not be filed on the dates mentioned in the memo of appeal, for the reasons mentioned therein.

07. Per-contra, Mr. Moomin Khan, learned counsel for the respondents has submitted that the appeal was required to be filed by the petitioner on 11th December, 2008 and once the petitioner did not file the same within the period prescribed, the learned Tribunal was correct in its approach by dismissing the appeal being time barred.

08. Heard learned counsel for the parties and perused the record, including the record of the Tribunal.

09. The perusal of the record reveals that the statutory appeal was preferred by the petitioner on 15th December, 2008, and vide Order dated 16th December, 2008, after recording the averments made in the memo of appeal and the submissions made by the learned counsel for the petitioner appearing therein, the learned Tribunal directed the respondents to file the counter reply and also produce the record. Simultaneously, the parties were directed to maintain the status-quo. The record further depicts that the respondents filed their counter objections and in their reply to (Para K) of the memo of appeal, the respondents did not deny the averments made in the (Para-K) of the appeal and rather stated that the appeal was time barred.

10. The factual aspects as narrated by the petitioner, which disabled the petitioner to avail the statutory remedy were never denied by the respondents. The learned Tribunal has not exercised the jurisdiction vested in it in a proper manner by deciding the appeal.

11. The Jammu and Kashmir Control of Building Operation Act, 1988, provides a remedy of appeal against the order of demolition issued under Section 7 (3) of the Act supra within a period of seven days after the date of order of demolition and there is no provision for condonation of delay. Once there is no provision of condonation of delay, in such view of the matter the approach adopted by the learned Tribunal was hyper-technical and the learned Tribunal was expected to take note of the averments made by the applicant/petitioner in his memo of appeal.

12. This Court could have remanded the matter back for deciding the issue afresh but taking into consideration that this petition has been pending before this Court for the last 12 years, this Court deems it proper to set aside the Order dated 18th October, 2012, passed by the learned Tribunal with further direction to the Tribunal to decide the appeal afresh on merits.

13. The parties are directed to appear before the learned Tribunal on 07.03.2024.

14. Disposed of.

(Rajnesh Oswal)
Judge

SRINAGAR
23.02.2024.
Showkat Khan

