28.08.2025
Ct. No. 30
S.L. No. 15
SM

WPA 9057 of 2025
Murlidhar Ratanlal Exports Limited
Versus
The State of West Bengal & Ors.

Mr. Soumya Majumdar, sr. adv.
Ms. Amrita Pandey
Ms. Bipasha Jaiswal
Ms. Sneha Singh (V/C)
……for the petitioner
Mr. Amitabrata Roy
Mr. Nilotpal Chatterjee
Mr. Munmun Ganguly
……for the State
Mr. Bikash Shaw
Mr. Sk. Saad Islam
…..for the respondent/workman

<u>In Re: WPA 9057 of 2025</u>

1. The writ application has been preferred challenging orders dated 6th May, 2022 passed by the Controlling Authority being respondent no. 3 and 30th December, 2024 passed by the respondent no. 2, being the Appellate authority under the payment of Gratuity Act, 1973 and orders dated 25th February, 2025 and 8th April, 2025 passed by the respondent no. 5, being the Certificate Officer herein.

2. It appears from the order of the appellate authority, that the appeal was dismissed on the finding as follows:-

"…………Hence the appeal petition has been filed beyond the prescribed time period and the delay in preferring the appeal by

the appellant is beyond the maximum limit bestowed upon the Appellate Authority that can be condoned even after ***considering the exemption in limitation allowed during pandemic.***

Hence, in view of above, the petition for appeal is dismissed as it is barred by limitation and thus, I found no reason to differ with the views of the Ld. Controlling Authority. The instant appeal is thus decided against the appellant and disposed of herewith……….”

3. One of the contentions raised by the employee workman before the appellate authority is that the appellant did not deposit the amount as per Section 7(7) of the Payment of Gratuity Act.

4. Though the said issue has not been considered by the appellate authority, the petitioner admits that there is a shortage of amount deposited before the appellate authority and undertakes to deposit the balance amount, if the order of the appellate authority dismissing the appeal is set aside and the appeal is remanded to be heard afresh on merit.

5. Now considering the findings of the appellate authority in respect of the delay in preferring the appeal, it appears that the controlling authority’s order is dated 06.05.2022. A review was preferred on 06.03.2023.

6. The appellate authority held that the review was invalid as it was not preferred within the period of limitation and as such did not take the period, when the review petition was pending, while condoning the delay.

7. Section 7(7) of the Payment of Gratuity Act, lays down:-

"Section 7.

....

(7) Any person aggrieved by an order under sub-section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.]"

8. Section 12(2) of the Limitation Act, lays down:-

"Section 12. Exclusion of time in legal proceedings.-

....

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded."

9. In ***Khakhar Shivlal Vallabhaji vs Mistry Ramjibhai Dhanjibhai, (1963) 4 GLR 164,*** Gujarat High Court held:-

> *"2. Part III of the Indian Limitation Act deals with the subject of computation of period of limitation. If after the period of limitation is computed, it is found that the period of limitation prescribed expired on a day when the Court is closed, then the suit, appeal or application as the case may be, may be instituted, preferred or made on the day that the Court reopens. This provision is contained in Section 4 of the Limitation Act. Section 4 has nothing to do with the question of computation of period of limitation. The period of limitation is to be computed in the manner stated in Section 12 to 25 of the Limitation Act. The first thing to be done in deciding the question of limitation is to compute the period of limitation The next step is to see whether Section 4 applies after the period of limitation is computed. For computing the period of limitation in the instant case only Section 12 has to be applied. It is conceded by the Learned Counsel for the applicant that we have only to apply Section 12 and the other sections in Part III of the Limitation Act are not applicable. In this case an application for certified copies was made on 6-6-59 and the copies were delivered on 22-6-59. The period to be excluded is the period between 6-6-59 and 22-6-59. This period has to be excluded if it falls within the period of limitation. But the period of limitation expired on 3-6-59 and therefore the period between 6-6-59 and 22-6-59 which is outside the period of limitation cannot be excluded. The period of limitation would therefore expire on 3-6-59 and as 3-6-59 happens to be a vacation day appeal could have been filed on the day of the reopening of the Court after the vacation i.e. on 15-6-59. In this view the delay would be 9 days and not 2 days. In Sub-section (2) of Section 12 of the Limitation Act it is provided that the time requisite for obtaining a copy of the decree shall be excluded. In this case the time requisite is 17 days. So 17 days would have to be excluded from the period of*

limitation. But the use of the word 'excluded would mean that this time would have to be deducted only if it falls within the period of limitation. But the period of limitation expired on 3-6-59 and the time requisite for obtaining the certified copies which is outside the period of limitation cannot therefore be excluded. In this view the correct delay would be 9 days. Even assuming that the time requisite would have to be deducted even though it falls outside the period of limitation the period of limitation of 30 days would have to be increased by 17 days. The period of limitation would therefore be 47 days starting from 3-5-59. The period of limitation would therefore expire on 20-6-59. That day not being a holiday Section 4 does not help the applicant and the appeal should have been filed on 20-6-59. In this view the delay would be 4 days."

10. In ***V. Nagarajan vs Sks Ispat and Power Limited, in Civil Appeal No. 3327 of 2020, decided on 22nd October, 2021,*** the Supreme Court held:-

"g) Section 12(2) of the Limitation Act, 196314 applies from the date on which the copy of the order is made available and not from the date when such order is passed. The explanation to Section 12(2) of the Limitation Act would not be attracted in cases where a free copy is mandated by the statute and online copies can be used for filing an appeal. The explanation to Section 12(2) of the Limitation Act would apply only where no appeal can be filed without an application for, and furnishing of a certified copy. In any event, Section 12(2) of the Limitation Act excludes the time taken from the date of order to it becoming available;
……………………..

(e) Section 12 of the Limitation Act is clear in prescribing that the limitation period can be ascertained only after an application for a certified copy of the judgement or order is filed within the

limitation period, in order to not be declared as time barred. The time period of limitation can either be calculated from the date of the order, 31 December 2019 in this case, or from the date of filing an application for a certified copy of the said order. In the absence of compliance with either, any appeal will be deemed as barred by limitation;

…………………

11 An appeal is a creature of statute, hence there is a fundamental distinction between the right to file a suit and the right to file an appeal. In terms of Section 9 of the Code of Civil Procedure, 1908, there is an inherent right to bring a suit of a civil nature, unless the suit is barred by statute. On the other hand, an appeal is a creature of statute and must have the clear authority of law.19 The IBC envisages a comprehensive dispute resolution process in Chapter VI. The NCLT is the empowered 'Adjudicating Authority' under Section 60 of the IBC with the jurisdiction to entertain any proceeding in relation to insolvency resolution or liquidation proceedings under the IBC. An appeal lies against an order of the Adjudicating Authority to the Appellate Authority, the NCLAT, under Section 61(1) of the IBC. An order of the NCLAT is subject to an appeal on a question of law to the Supreme Court under Section 62.

…………………..

14. Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25-10- 2019 (the date of the order [Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd., 2019 SCC OnLine NCLT 749] of NCLT) up to 21-11-2019, to make a copy application. But at least from 19-12-2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped from running. From 19- 12-2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 2-2-2020."

....

19 Section 12 of the Limitation Act provides guidance on reckoning the period of limitation and excludes the time taken by a party for obtaining a certified copy of the order it seeks to appeal. However, the explanation clarifies that the time taken by the court in preparing the order before an application for a copy is filed by the aggrieved party, is not excluded from the computation of limitation:

"12. Exclusion of time in legal proceedings.—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 3[* *] shall also be excluded.*
(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

PART C Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded." (emphasis supplied) The import of Section 12 of the Limitation Act and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the "time requisite" for obtaining a copy is to be *excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 1424 of the NCLAT Rules empowers the NCLAT to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are "14. Power to exempt.– The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice."*

11. Admittedly, the appeal has been preferred on 25.07.2023, that is after more than four months of **filing** of the review application.

12. It is the case of the petitioner that the order passed by **the controlling authority was an ex parte order.**

13. It appears that the review application was disposed/dismissed on 29.03.2023. As such the appeal preferred on 25.07.2023, was

with the period of 120 days from the date of dismissal of the review application.

14. Considering the said fact and other materials on record, the period of limitation is hereby condoned in the interest of Justice, considering that the appeal has been preferred within 120 days after the review application was dismissed.

15. The period of delay in preferring the review application is not the subject matter in the writ application.

16. **Accordingly the order passed by appellate authority on 30.12.2024 being not in accordance with law is set aside.** The appellate authority is directed to hear the appeal on merit and dispose of the same on hearing the parties and considering the materials on record within 60 days from the date of communication of this order by passing a reasoned order.

17. Pending hearing of the appeal, the other orders under challenge be stayed till disposal of the appeal.

18. **WPA 9057 of 2025 is disposed of.**

19. All connected application, if any, stands disposed of.

20. Interim order, if any, stands vacated.

21. Urgent Photostat certified copy of this Order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul). J]