DAYAWANTI DEVI & 2 ORS. V. MANOJ KUMAR AGARWAL

1. DAYAWANTI DEVI & 2 ORS.
W/O. LATE AMARNATH AGARWAL, NEW WARD NO 6,
NEAR CHECK NAKA, AADARSH NAGAR, P.O. & P.S
CHAKKARDHARPUR
SINGHBHUM EAST
JHARKHAND
2. PINKY AGARWAL
W/O. SRI NARAYAN AGARWAL, NEW WARD NO 6, NEAR
CHECK NAKA, AADARSH NAGAR, P.O. & P.S
CHAKKARDHARPUR
SINGHBHUM EAST
JHARKAHAND
3. M/S. PRATHAM CONSTRCTION
THROUGH ITS PARTNER SHRI NARAYAN AGARWAL,
NEW WARD NO 6, NEAR CHECK NAKA, AADARSH
NAGAR, P.O & P.S CHAKKARDHARPUR
SINGHBHUM EAST
JHARKAHAND

……..Appellant(s)

Versus

1. MANOJ KUMAR AGARWAL
S/O. SRI KEDARMAL AGARWAL, R/O. CHANDMARI
ROAD, DHARAMSALA GALI, WARD NO 8, P.O. & P.S –
CHAKKARDHARPUR
SINGHBHUM EAST
JHARKHAND

……..Respondent(s)

Case No: FIRST APPEAL NO. 1657 OF 2018

Date of Judgement: 16 Jan 2023

Judges:

HON’BLE MRS. JUSTICE DEEPA SHARMA,PRESIDING MEMBER

For the Appellant : Mr.Shree Prakash Sinha, Advocate
Ms.L.Philip, Advocate

For the Respondent : Mr.Jitendra Kumar Sahoo, Advocate

Facts

First Appeal filed by Dayawanti Devi, Pinky Agarwal and M/s Pratham Construction against the order dated 21.07.2017 of the State Consumer Disputes Redressal Commission, Jharkhand. Appeal filed after a delay of 156 days. Application seeking condonation of delay also filed. Order was passed by State Commission on 21.07.2017. Certified copy applied on 16.02.2018 and received on 12.03.2018. Delay reasoned due to illness of Dayawanti Devi who was suffering from cancer and had gone to Chennai for treatment in 2018. Partners could not come to Delhi to file appeal earlier due to her ill health. Respondent contends the appellants attended Registrar of Companies office during the period regarding their problems, so the plea is false. Medical documents do not show admissions or cancer surgery.

Court’s Opinion on Condonation of Delay

Condonation of delay is not a matter of right, sufficient cause has to be shown which prevented filing appeal within limitation period (Ram Lal Judgement). Court has to examine if delay is properly explained in each case (R.B. Ramlingam Judgement). Special limitation period prescribed under Consumer Protection Act to be kept in mind (Anshul Aggarwal Judgement). Burden is on applicant to show circumstances beyond control that prevented filing appeal even after acting with due diligence Medical documents filed do not show

Dayawanti Devi's admission, cancer treatment or surgeries. Name only reflects in ultrasound report for gall bladder issue. No proof shown for cancer. No records to show circumstances that prevented filing appeal within time. Reasons not beyond control of appellants. Application has no merit, hence dismissed. Appeal also dismissed since it was delayed.

Arguments by Parties

Appellants:
Delay due to illness and cancer treatment of Dayawanti Devi, certified copy delay. Circumstances were beyond control.

Respondent:
Plea is false as appellants attended Registrar of Companies. Medical documents do not prove cancer admission or surgery.

Sections & Cases Referred/Cited

Section 5 – Sufficient cause for condonation (Ram Lal Judgement); Due diligence and reasonable cause (R.B. Ramlingam Judgement); Special limitation period under Consumer Protection Act (Anshul Aggarwal Judgement)

So in summary, the first appeal filed against the state commission order was delayed significantly. The application seeking condonation of delay on grounds of illness did not provide sufficient proofs as per the court. Hence the delay was not condoned and consequently the appeal was also dismissed.

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Full Text of Judgment:

1. The present Appeal has been filed by Dayawanti Devi, Pinky Agarwal and M/s Pratham Construction against the

order dated 21.07.2017 of the State Commission Jharkhand. The Appeal has been filed by the Appellant after a delay of 156 days and, therefore, an application IA No. 17331 of 2018 has been filed seeking condonation of delay. Arguments have been heard on the application IA No. 17331 of 2018 (condonation of delay)

1. It is contended that al-though order has been passed on 21.07.2017 but one of the Appellant Dayawanti Devi had fallen sick and was suffering with cancer and she was taken to Chennai for her cancer treatment in 2018 and, therefore, appeal could not be filed. It is also submitted that certified copy of the order was applied on 16.02.2018 which was delivered on 12.03.2018. Thereafter, appellant could not come to Delhi because of ill health of Dayawanti Devi / Appellant No.1. Later on Partner of Appellant No.3 came to Delhi to inquire about the filing of First Appeal which was prepared but could not be filed in the absence of Dayawanti Devi. It is submitted that the delay caused is unintentional and not deliberate and was due to circumstances beyond the control of the Appellant. Counsel for the Appellant has relied on certain documents dated 24.01.2018 in support of his contention.

2. Counsel for the respondent submits that during the intervening period after the impugned order was passed, Dayawanti Devi and other Appellants have attended the office of Registrar of Companies for redressal of their problems and it is submitted that plea taken is false and also that the medical documents filed on record does not show that Dayawanti Devi had ever been admitted or underwent any operation for the cancer.

3. It is settled proposition of law that condonation of delay is not a matter of right. The person who is seeking condonation of delay has to show the reasonable cause which prevented him / her from filing the appeal / revision within the period of limitation. The Hon’ble Supreme Court in the case of Ram Lal and Ors. Vs. Rewa

Coalfields Limited AIR 1962 Supreme Court 361 has held as under:

“12. It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condonation has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is
at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.”

4. In case of “R. B. Ramlingam vs. R. B. Bhavaneshwari, I (2009) CLT 188 (SC), the Hon’ble Supreme Court has held as under:

“5. We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition.”

5. In the case of “Anshul Aggarwal vs. New Okhla Industrial Development Authority, (2011) 14 SCC 578,” the Hon’ble Supreme Court has held that special nature of period of limitation prescribed under the Consumer Protection Act has to be kept in mind while dealing with such applications. The Hon’ble Supreme Court has held as

under:

“5. It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this court was to entertain highly belated petitions filed against the orders of the consumer Fora.”

6. The burden is on the applicant to show on record the reasons which were beyond its control and prevented them for filing Appeal even after acting with due diligence and care.

7. From the perusal of the application, it is apparent that present Appeal has been filed by Dayawanti Devi and Pinky Agarwal who are the partners in the firm of respondent No.3 Narayan Agarwal. The plea of delay has been taken on the illness of Dayawanti Devi, one of the partner of Appellant No.3 i.e. a Partnership Firm. The documents placed on record does not in any way show that she was ever admitted in any hospital for the treatment of the cancer. The medical documents on file does not bear her name and in the ultrasound report her name bears which shows that she had undergone through ultrasound for Gall Bladder treatment. No report showing that she was suffering with cancer has been filed on record. Even otherwise, period of limitation for filing the present Appeal starts running on the date of passing of the impugned order which is 21.07.2017. The period of limitation is 30 days which had expired on 20.08.2017 and no medical document of Dayawanti Devi has been placed on record to show that that she was unwell during this period, although in the application it is submitted

that Dayawanti Devi was not told about the passing of the order by her counsel. However, it is not shown as to what date the Appellant had come to know about the passing of the order. The Application is totally silent about it. The applicant has alleged that that they had applied for certified copy on 16.02.2018 which shows that they were aware of the passing of the impugned order before that date but the date has not been disclosed. Even otherwise, they had admittedly received the certified copy on 12.03.2018 but the Appeal had been filed somewhere in September 2018, which shows that it was further delayed. There is nothing on record which could show that there were circumstances which prevented the Appellant to file the present Appeal within time and it were beyond the control of the Appellant. The Application has no merit and same is dismissed.

First Appeal

Since Appeal is delayed, the same is also dismissed.