

(2023) 01 ATPMLA CK 0002

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-6860/CHD/2020, -4196/CHD/2018, -1767/CHD/2015,
FPA-PMLA-935/CHD/2015

Riazuddin

APPELLANT

Vs

Deputy Director, Directorate Of
Enforcement

RESPONDENT

Date of Decision: Jan. 31, 2023

Acts Referred:

- Limitation Act, 1963 - Article 122
- Prevention Of Money Laundering Act, 2002 - Section 35(1), 35(2), 35(2)(g), 35(2)(h)

Hon'ble Judges: G. C. Mishra, Member; V. Anandaraja, Member

Bench: Division Bench

Advocate: Prashant Pandey, Manish Mishra, Nitin Verma,, Nidhi Raman, Charu Modi

Final Decision: Dismissed

Judgement

MP-PMLA-6860/CHD/2020 (Resto.)

IN

FPA-PMLA-935/CHD/2015

The application for restoration of the appeal has been filed by Shri Prashant Pandey, Advocate to restore the aforesaid appeal which has been dismissed on 10-12-2019.

The following have been pleaded on behalf of the appellant/applicant in the restoration application :-

“That the Appellant/Applicant had engaged an Advocate named Shri P.K. Sachdeva as is evident from the order dated 16.07.2018. It is submitted that the abovementioned Advocate had marked his appearance for the Applicant on 16.07.2018 and had informed the Hon’ble Tribunal that he would be filing his Vakalatnama. However due to reasons best known to the abovementioned learned’ Advocate, he failed to appear on subsequent dates and without informing the Applicant the abovementioned Ld’ Advocate has withdrawn himself from the matter in question.

That in light of the aforementioned circumstances the Legal Representatives of the Applicant/Appellant has engaged the undersigned Advocate to represent the Applicant/Appellant in the matter on subsequent dates before this Hon’ble Tribunal.

That the non-appearance of the Appellant/Applicant was neither intentional nor deliberate but was due to the aforementioned reason. Hence this Hon'ble Tribunal may be pleased to restore the captioned appeal to its original position.

That Vakalatnama is filed with this application on behalf of the Applicant/Appellant".

During the course of hearing the Ld. Counsel for the appellant/applicant has admitted that there is a delay of 10 days in filing the appeal but no application for condonation of delay in filing the restoration application has been filed. It was argued by him that the Prevention of Money Laundering Act (PMLA), 2002 is a self contained code. It is a special Act. By drawing attention to Section 35(1) of the PMLA, 2002 he submitted that this Tribunal is not bound by the procedure laid down in the Code of Civil Procedure (C.P.C) but shall be guided by the principles of natural justice and further argued that there is no provision under PMLA, 2002 prescribing the time limit for filing the application for restoration of the appeal dismissed for default and that the Limitation Act is also not applicable and that the period of 30 days for filling the restoration application cannot be made applicable in the giving facts and circumstances of the case.

It was also argued by Shri Pandey, that the party cannot be made to suffer due to the non-appearance of the advocate. He relied on the judgment dated 16-04-1981 of Hon'ble Supreme Court passed in the matter of Rafiq & Anr. Vs. Munsilal & Anr.

It is also submitted by Shri Pandey, Advocate that Shri P.K. Sachdeva, Advocate appeared on 16-07-2019 and sought time to file his Vakalatnama and his non-appearance on the next date i.e. on 10-12-2019 had resulted in dismissal of the appeal for default. On the aforesaid ground it was submitted that the dismissal of the appeal for default is attributed to the concerned advocate for which the party should not be made to suffer.

On the aforesaid grounds Shri Pandey, Ld. Advocate sought for the restoration of the appeal.

On the other hand, the respondent filed reply to the application for the restoration of the appeal inter-alia on the following grounds:-

"a. That the time period allowed for filing an application for restoration is 30 days from the date of dismissal, and the limitation prescribed in relation to the same is not only judicially precedented but categorically legislated as per Article 122 of the Limitation Act, 1963. It is pertinent to mention here that the sheer negligence on part of the appellant in appearing, either in person or through counsel, cannot be justified by filing an application for restoration and misusing the functioning of any forum, let alone this Hon'ble Tribunal.

b. That the application filed the Applicant/ Appellant is not within the period of limitation and as such the same is liable for rejection. It is further submitted that the Applicant's appeal was dismissed by default on 10-12-2019 and the present application has been filed on 20-01-2020. There has been no plausible reasoning given by the Plaintiff which can substantiate for the delay so caused. The pleas so raised are completely whimsical and without any basis.

c. That the plea taken by the Applicant for a consecutive non-appearance before this Hon'ble Tribunal, either in person or through a counsel is devoid of any reasoning. Merely diverting the blame on a counsel, whose Vakalatnama was never even brought on record is entirely unjustified, unreasonable, vague and disputed.

d. On a bare perusal of the order dated 21-08-2018, it clearly emerges that this Hon'ble Tribunal, was pleased to grant time for filing the Vakalatnama as well as the application to bring the legal representatives of the deceased appellant on record. As it so transpires, the Applicant did not bother to file the same within a period of nearly three years from date of death of the appellant i.e. 16-01-2017 to the date of dismissal of appeal i.e. 10-12-2019. In furtherance of the same, the Applicant tried to mislead this Hon'ble Appellate Tribunal by way of reiterating the account of death of the Appellant as fresh knowledge so as to seek further time on account of the same information. Nevertheless, this Hon'ble Tribunal on compassionate grounds, was pleased to grant further time by way of order dated 16-07-2019.

e. Needless to say, that despite having been granted enough time from 21-08-2018, to file a Vakalatnama and an application to bring the legal representative on record, the Applicant failed to appear, in person or through counsel, which led to this Hon'ble Appellate Tribunal justly dismissing the appeal of the Appellant.

f. That the Principle on which the law of limitation is based is "vigilantibus non dormientibus legessubvenient" i.e. the, law aids the diligent and not the indolent. In the present case there is no explanation much less reasonable and sufficient cause to justify the unsupportable delay in preferring the appeal.

g. That the present application is liable to be dismissed with costs as the plaintiff has not approached this Court with clean hands,

h. That the present application is also liable to be dismissed as the plaintiff has failed to give any plausible explanation for the non-appearance of the counsel or himself. The reasoning so afforded is highly improbable and bereft of any merits as neither is there any affidavit from his previous counsel nor any document evidencing the fruitfulness of the averments made in the application. The application is clearly barred by limitation."

The learned counsel for the respondent strongly raised objection to the contentions made by Shri Pandey, Advocate and in addition to the grounds mentioned in the reply, it was submitted from the side of the respondent that the application is liable to be dismissed solely on the ground that it is barred by limitation and that no application/submission has been made from the side of the applicant to condone the delay in filing the application for restoration. It was also submitted from the side of the respondent that the judgment cited by Shri Pandey, Advocate is not applicable in the present facts and circumstances of the case and that the application is liable to be dismissed.

Heard both sides and perused the materials on record. Before proceeding to decide on the merit of the restoration application, it is necessary to deal with the delay in filing the application of restoration of the appeal.

It is pertinent to mention that the appeal was dismissed for default on 10-12-2019 on which date none appeared for the appellant or for the legal heirs of the deceased appellant. The application for restoration is filed in the Tribunal on 20-01-2020 which is about 40 days after the dismissal of the appeal. It is admitted, during the course of hearing, by the learned counsel for the applicant that there is a delay of 10 days in filing the application but it was submitted from the side of the applicant that neither the CPC nor the Provisions of Limitation Act, 1963 is applicable to the PMLA, 2002. We do not agree with this submission made by Shri Pandey, learned counsel for the applicant, because section 35(2) of the PMLA, 2002 clearly provides that "the appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters:-

- (a) summoning.....on oath;
- (b) requiring.....documents;
- (c) receiving.....affidavits;
- (d) subject to.....documents from any office;
- (e) issuing commissions.....or documents;
- (f) reviewing.....its decisions;
- (g) Dismissing a representation for default or deciding it ex parte;
- (h) Setting aside any order of dismissal of any representation for default or any order passed by it ex parte;
- (i) any other matter.....by the Central Government.

In view of the aforesaid provisions under Section 35 (2) (g)&(h) it is clear that this Tribunal has power as vested in the Civil Court and that by vesting the aforesaid powers of Civil Court in this Tribunal, the Legislative intention is clear that the law of limitation prescribed for an application for restoration of appeal as provided under Article 122 of the Limitation Act 1963 is also applicable. The time limit of 30 days in filing the restoration application is also followed by the Civil Court while deciding such application. There is no specific provision in PMLA, 2002 that the provisions of the Limitation Act, 1963 is not applicable while filing a delayed restoration application.

The time limit for filing of application for restoration of appeal is prescribed under Article 122 of the Limitation Act, 1963 wherein 30 days period has been prescribed. Admittedly there is a delay of 10 days in filing the application for restoration of the appeal in the present case and that neither there is any prayer in the restoration application nor any application for condonation of delay of 10 days has been filed nor any oral prayer has been made from the side of the Applicant to condone the delay. Rather the Judgment of Hon'ble Supreme Court has been relied upon to submit that for the absence of Advocate the party cannot be made to suffer. The judgment of Hon'ble Supreme Court is not applicable to the facts and circumstances of the present case. Although, on the prayer of Shri P. Sachdeva, Advocate, opportunities were granted to file Vakalatnama but neither Vakalatnama was filed for more than one year nor anybody from the side of proposed legal heirs was present nor any of the legal heirs was present on 10-12-2019. It is also seen from the record that the application for the restoration has been filed without any affidavit.

In the absence of any prayer in writing or otherwise and blunt denial of applicability of CPC and Article 122 of the Limitation Act, 1963, the non filing of application for condonation delay in filing the restoration application is fatal.

Hence, we do not find any merit in the contentions raised from the side of the Applicant. As such the application for restoration is dismissed on the ground that the application for restoration is barred by limitation.

However, we have not gone into the merit of the application for the restoration of the appeal and our decision is only limited to dismissal of restoration application being barred by limitation.

No order as to cost.