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(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

Vs

Deputy Director,

Directorate Of RESPONDENT

Enforcement

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withdrawn himself from the matter in question.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 nonâ€"appearance of the Appellant/Applicant was neither intentional nor deliberate but was due to the aforementioned reason.

Hence this Hon'ble Tribunal may he pleased to restore the captioned appeal to its original position.

That Vakalatnama is filed with this application on behalf of the Applicant/Appellantâ€.

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 form 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 on 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 "vigilantbus non dormientibuslegessubvenient†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.â€

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:-

- (e) issuing commissions……………………………a€¦or documents;
- (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.