Mori Riba and Others Vs Yomkar Riba and Others

Court: Gauhati High Court (Itanagar Bench)

Date of Decision: Jan. 5, 2011

Acts Referred: Constitution of India, 1950 â€" Article 226
Limitation Act, 1963 â€" Article 124, 5

Citation: AIR 2011 Guw 181 : (2011) 3 GLT 66

Hon'ble Judges: P.K. Musahary, J; I.A. Ansari, J

Bench: Division Bench

Advocate: K. Ete, N. Ratan, M. Kato, D. Padu, K. Tasso, B. Nomak, O. Mize and S. appa, for the Appellant; R.H. Nabam, for the Respondent

Judgement

I.A. Ansari, J.
We have heard Mr. K. Ete, learned Counsel for the applicant, and Mr. R.H. Nabam, learned Senior Government

Advocate, appearing on behalf of the opposite party.

2. By making this application u/s 5 of the Limitation Act, 1963, the applicant, who was not (sic) party to the PIL No. 3 (AP)/2008 [Shri Yomkar

Riba v. State of Arunachal Pradesh and Ors.], has sought for condoning the delay of a period of 13 days in filing toe petition seeking review if the

judgment and order, dated 10.11.2008. passed in PIL NO. 3(AP)2008.

3. Notwithstanding, however, the fact that the applicant hen made this application seeking condonation of delay, it is submitted, on behalf of the

applicant, that as far as exercise of review jurisdiction by the High Court in a writ proceeding under Article 226 of the Constitution of India is

concerned, the same is not subject to the provisions of the Limitation Act, in the sense that Article 124 of the Limitation Act, which proscribes, for

review, a period of 30 days from the date of the decree or order of courts other than the Supreme Court, does not apply to a writ proceeding or

review of on order paused therein. It is submitted that the proscribed period of 30 days in not applicable to a writ proceeding under Article 226

inasmuch by the review by the High Court of its own order, passed under Article 226, is in exercise of its inherent powers, which every court of

plenary jurisdiction has. In support of his submissions, Mr. Ete relies on a decision of this Court in Sri Kanak Chandra Sarma v. The Board of

Secondary Education, Assam. Guwahati and Ors. 1995 (2) GLT 52 : (1995) 1 GLR 116, wherein a learned single Judge of this Court, has taken

the view that Article 124 of the Limitation Act, which prescribes the period of limitation for making an application for review of an order, does not

apply to the High Court if an application is made to the High Court seeking review of its order passed in exercise of the powers under Article 226.

4. While considering the case of Sri Kanak Chandra Sarma (supra), it needs to be noted that though the Limitation Act, may not apply to a

proceeding under Article 226, the Limitation Act, is a statute based on public policy, which reflects legislative intent to ensure that no lis is brought

to a court of law for adjudication beyond the period, which the Legislature may prescribe. Thus, various periods of limitation, prescribed by the

Limitation Act, are nothing but measurable standards, which are required to be applied for determining if an application for review of an order,

passed under Article 226, is within a reasonable period of time or not. Since limitation Act, as indicated hereinbefore, reflects the public policy as

regards the period of limitation within which a us shall be brought to a court of law, the High Court, too, while exercising its Jurisdiction under

Article 226, would, normally, not deviate from such a public policy.

5. The Constitution Bench, in State of Madhya Pradesh Vs. Bhailal Bhai and Others, had the occasion to discuss the object and applicability of the

prescribed periods of limitation, as given by the Limitation Act, to a proceeding under Article 226 and concluded, thus:

If appears to us, however, that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be

brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may

consider the delay unreasonable even it is less than the period of limitation proscribed for a civil action for the remedy but where the delay is more

than this period, it will almost always be proper for the court to bold that it is unreasonable. The period of limitation prescribed for recovery of

money paid by a mistake under the limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases

on or shortly after 17th January, 1956 the delay in making these applications should be considered unreasonable. If on the other hand, as Mr.

Andley seems to argus, the mistake was discovered much later, this would be a controvarulal fact which cannot conveniently be decided in writ

proceedings. In either view of the matter we are of opinion the ordary for refund made by the High Court in these seven cases cannot be sustained.

6. Though the decision in Bhai Lal Bhai (supra) was as regards recovery of money, the principle, enunciated therein, would apply to issuance of

writs by the High Court in every exercise of its power under Article 226.

7. In the face of the decision in Bhai Lal Bhai (supra), there can be no escape from the conclusion that the High Court''s jurisdiction is not barred in

considering an application for review of an order passed by it under Article 226 even if the application, seeking review of the order, is made

beyond the prescribed period of 30 days from the date of making of the order. When the High Court entertains an application for review even

after expiry of a period of 30 days the High Court, as a measure of public policy, must be satisfied that there were reasons preventing the applicant

from making an application for review for reasons beyond his control.

8. It is, therefore, imperative that an application, seeking review of an order made under Article 226, discloses adequate reasons if the application

is hot made expeditiously. If an application for review is found by the High Court to be suffering from negligence or latches the High Court may not

entertain such an application for review in respect of an order passed by it even under Article 226. Though the Gauhati High Court Rules, as

correctly indicated in Sri Kmak Chandra Sarma (supra), do not prescribe any period of limitation for making an application for review of order

passed in a writ proceeding, the High Court may, in a given case, decline to entertain an application for review of an order passed under Article

226 if the application for review is, inordinately, delayed and in the meanwhile, the is becomes stale. There can be no doubt that the High Court, as

a court of plenary jurisdiction, can review its own order passed under Article 226 at any given period of time, the High Court would nevertheless,

ordinarily, govern itself by the established standards.

9. Because of what has been discussed and pointed out above, while we agree with the observation, made in the case of Sri Kanah Chandra

Sarma (supra), that the Article 124 of the Limitation Act, would not apply to an application for review of an order passed under Article 226 of the

Constitution of India, we clarify that the High Court would not, ordinarily, entertain an application for review if the same is made beyond the period

of 30 days as prescribed by the Limitation Act, on the ground that the public policy is not to, ordinarily, entertain an application for review beyond

the period of 30 days from the date of making of the order. It would, however, remain open to the High Court to entertain, in a given case, an

application for review even if such an application is filed beyond the period of 30 days provided that the High Court''s satisfied that the applicant

has sufficient reasons for not being able to apply for review earlier.

10. Coming to the merit of the present application seeking condonation of delay, we find that the order, which the applicant seeks to get a

reviewed, has been made after 43 days of the order, which the applicant seeks to get reviewed. Explaining the reasons for not being promptly

applying for review, the applicant has pointed out that though his interest was involved in the PIL and in the order, which has been passed therein,

he was never made a party thereto, he was never heard, but a direction has been given to the Government to remove him from the land, which he

is in occupation of, and that he came to know of the order of eviction only when the eviction proceeding was initiated against face of the reasons

assigned by the applicant, we are clearly of the view that the applicant has given sufficient convincing reasons for belatedly coming to this Court

seeking review of the order, dated 10.11.2008, passed in PIL No. 3(AP) of 2008.

11. Considering, therefore, the matter in its entirety and in the interest of justice, we decide to consider the applicant"s review petition on merit.

Ordered accordingly. Let the review petition be listed for order.

12. This Miscellaneous application shall stand disposed of in terms of the observations made and the directions given above.

13. No order as to cost.