

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1407 OF 2015

(Arising out of SLP (Civil) No. 16296 OF 2012)

M/S. CHEEMA PAPER MILLS (P) LTD.

Appellant(s)

VERSUS

U.P. STATE ELECTRICITY BOARD & ANR.

Respondent(s)

O R D E R

Leave granted.

2) In this appeal, the High Court of Uttarakhand has condoned a delay of almost 10 years i.e. 3374 days at the behest of the U.P. State Electricity Board, who is the respondent before us. The High Court has held that since this was not a "day fixed matter", no limitation period at all would apply to the case, and therefore, restored the appeal to the file.

3) The brief facts in this case are as follows:-

A suit was filed by the petitioner before us for a permanent injunction restraining the U.P. State Electricity Board from recovering the amount of Rs. 39.62 lacs from the Petitioner-Company, which runs a paper mill, primarily, on the ground that the appellant had paid all bills and there was no basis for this demand. There is no dispute before us that this suit was in fact decreed in 1998 in favour of the appellant. First Appeal No. 260/1999 and 193/2011 were filed by the respondents and dismissed on 03.04.2002 for the reason that none

appeared for the appellant. After a period of almost 10 years, a Civil Miscellaneous restoration application was filed on 01.08.2011 in which the respondent explained the delay in the following terms:

3. That on creation of the State of Uttarakhand as well as its High Court under the provisions of the U.P. State Reorganization Act, 2000, the record of the aforesaid appeal was transferred to the High Court of Uttarakhand at Nainital.

4. That at the time of creation of the State of Uttarakhand the respondent NO.2 was under electricity supply of the Electricity Distribution Division Kashipur District Udham Singh Nagar, as such, on transfer of the record of the aforesaid first appeal to the High Court of Uttarakhand at Nainital, the Executive Engineer, Uttarakhand Power Corporation Ltd. Electricity Distribution Division, Kashipur District Udham Singh Nagar instructed to Sri Ranjeet Saxena, Advocate to look after the aforesaid case and file an impleadment application on behalf of the Uttarakhand Power Corporation Ltd. in the aforesaid case.

5. That in the month of January, 2006 the Electricity Distribution Division, Kashipur was bifurcated and the respondent No.2 came under the supply of the Electricity Distribution Division Bajpur. On bifurcation of the said Electricity Distribution Division, the entire record of the area which came under the supply of the Electricity Distribution Division, Bajpur was transferred to the said division.

6. That in the second week of June, 2011 the Executive Engineer, Electricity Distribution

Division, Bajpur made an inquiry through his counsel and came to know that the aforesaid appeal has been dismissed for want of prosecution on 03.04.2002.

4) A perusal of these three paragraphs show that there is no explanation whatsoever for inordinate delay that occurred between 2002 and 2011. It is merely stated that there was a bifurcation of the Electricity Distribution Division in January, 2006. It does not tell us why nothing was done between 2002 and 2006. Further, we are at a loss to discover how in the second week of January, 2011, the Executive Engineer of the Electricity Distribution Division, Bajpur suddenly woke up and made an inquiry through his counsel and then came to know that the appeal has been dismissed for want of prosecution on 03.04.2002. There is no explanation of any sort worth the name.

5) The High Court, in the impugned judgment, observed:

"10. In both the said rulings cited by senior counsel Mr. B.D. Upadhyay in his favour, it has been held that when the matter was dismissed on a particular date when it was not a day fixed matter it cannot be said that it has been dismissed under Order XLI Rule 17 CPC, and consequently no limitation would apply in such matter as contemplated under the Limitation Act. Moreover, under Order XLI Rule 19 an appeal can always be readmitted when it is proved by the applicant that he was prevented by sufficient cause from appearing when the appeal was called for hearing."

6) It is surprising to find that a distinction has been made between a "day fixed matter" and other matters for which no limitation would apply. Under the Limitation Act, in all cases, Article 122 would apply which states that an application to restore an appeal dismissed for default of appearance or want of prosecution, a period of 30 days is given, the time from which such period begins to run being the date of dismissal. Obviously, in the present case, the 30 days period expired almost 10 years back. Therefore, a clear case for condonation of delay under Section 5 would have to be made out.

7) We have already adverted to the restoration application and stated how no case of any sort has been made out which would even have a semblance to "sufficient cause" required by Section 5.

8) We, therefore, allow this appeal and set aside the judgment of the High Court. There will be no order as to costs.

..... J.
(J. CHELAMESWAR)

..... J.
(ROHINTON FALI NARIMAN)

New Delhi;
February 02, 2015.

ITEM NO.204

COURT NO.7

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 16296/2012

(Arising out of impugned final judgment and order dated 30/03/2012 in FA No. 193/2001 passed by the High Court Of Uttarakhand At Nainital)

M/S. CHEEMA PAPER MILLS (P) LTD.

Petitioner(s)

VERSUS

U.P. STATE ELECTRICITY BOARD & ANR.

Respondent(s)

(with interim relief and office report)

(for final disposal)

Date : 02/02/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Amit Pawan, Adv.
Mr. Abhishek Amrithanshu, Adv.
Mr. Shailendra Kumar, Adv.
Mr. Suryodaya Prakash Tiwari, Adv.

For Respondent(s) Mr. Niraj Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed. There will be no order as to costs in terms of the signed order.

(R.NATARAJAN)
Court Master

(INDU BALA KAPUR)
Court Master

(Signed order is placed on the file)