

The C.I.T., Bombay City

Vs

Shri R. H. Pandi, Managing Trustees of Trust, Bombay

The C.I.T., Bombay City

Vs

The Public Utilities Investment Trust Ltd.

Ram Krishan

Vs

Raghvir Kumar and Others

Civil Appeals No. 895-897 of 1973

(CJI A. N. Ray, K. K. Mathew, V. R. Krishna Iyer JJ)

04.09.1974

JUDGMENT

RAY, C.J. -

1. In these matters a question arises as to whether applications for condonation of delay in filing petition of appeal can be heard by the Judge in Chambers. An argument is advanced before the Hon'ble Judge in Chambers that if an application for condonation of delay is refused by the Judge in Chambers it will amount to dismissal of the appeal by the Judge in Chambers. Therefore, it is said that these applications should be heard by the Court which alone can dismiss an appeal.

2. Notices were given to the Attorney General and the Bar Association because it was said that the existing practice of posting applications for condonation of delay in filing petition of appeal before the Judge in Chambers should be discontinued and such applications should be listed before the Court.

3. The relevant rule is Order VI, Rule 2(14) of the Supreme Court Rules. Order VI Rule 2 states that the powers of the Court in relation to matters enumerated there may be exercised by a Single Judge sitting in Chambers. Clause (14) reads :

Applications for enlargement or abridgement of time except where the time is fixed by the Court or relates to deposit of security and except applications for condonation of delay in filing special leave petitions.

Under the rules it follows that all applications for enlargement or abridgement of time except the three cases mentioned in Order VI Rule 2(14) are heard by the Judge in Chambers. An important exception is application for condonation of delay in filing special leave petitions.

4. Order XLVII, Rule 3, of the Supreme Court Rules states that the Court may enlarge or abridge any time appointed by these rules or fixed by any order enlarging time, for doing any act or taking proceedings upon such terms (if any) as the justice of the case may require, and any enlargement may be ordered and the application therefore is not made until after the expiration of the time appointed or allowed. A petition of appeal is required under Order XV of the Rules of this Court to be present within 60 days from the grant of Certificate of fitness. The time to present the petition is fixed by the rules of this Court. Therefore Order XLVII, Rule 3 will apply with regard to enlargement or abridgment of any time appointed by the Rules for doing any act.

5. Order VI, Rule 2(14) speaks of applications for enlargement or abridgement of time. Here the words "enlargement or abridgement of time" take in applications for enlargement of time appointed by the Rules. The significant feature in the Rules is that applications for condonation of delay in filing special leave petition are excepted from the business of the Chamber Judge. The natural presumption is that but for the exception the Rule would have also included applications for condonation of delay in filing special leave petitions. Any application for condonation of delay in filing petition of appeal is therefore included in applications for enlargement or abridgment of time.

6. This practice of the Chamber Judge hearing applications for condonation of delay in filing petitions of appeal within the time appointed by the Rules of this Court has been followed ever since 1966. *Cursus curiae est lex curiae*. The practice of the Court is the law of the Court. See *Brooms Legal Maxims* at p. 82. Where a practice has existed it is convenient to adhere to it because it is the practice. "The power of each Court over its own process is unlimited : it is a power incident to all Courts." See *Cocker v. Tempest* (7 M & W 502).

7. We are therefore of opinion that applications for condonation of delay in filing petitions of appeal are within the Chamber business under Order VI, Rule 2(14).

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