

PATNA HIGH COURT

Surya Mohan Thakur

Vs

State of Bihar

Misc. Appeals Nos. 89 and 90 of 1950

(B.P. Sinha and C.P. Sinha, JJ.)

14.12.1950

JUDGMENT

B.P. Sinha, J.

1. These two cases raise questions of first impression which do not ordinarily arise in these Cts. The questions which arise in both these cases are (1) whether Section 5, Limitation Act, can be applied to them, and (2) whether, if we decide that the provisions of Section 5, Limitation Act, are available to the applt. in the peculiar circumstances of these cases, the delay in filing the two appeals should be condoned.

2. The facts of these two cases are similar except in one respect that, whereas Misc. Appeal 80 of 1950 arises out of the award in Land Acquisition Case No. 40 of 1946 arising out of Case No. 1 of 1943-44, Misc. Appeal 90 of 1950 arises out of Land Acquisition Case No. 39 of 1946 arising out of Case No. 1 of 1942-43. This difference has been sought to be made use of by the learned Counsel for the applt. as will presently, appear. The other facts of the case may be stated as common to both the cases as follows : Two appeals were filed on 21-3-1950 from two awards dated 13-12-1949, of the District Judge of Bhagalpur under Rule 75A, Defense of India Rules, read with Section 19, Defense of India Act. On 1-4-12-1949, the applt. made an appln. for a certified copy of the awards. The requisite stamps were notified on 22-12-1949, and were delivered on 23-12-1949. The copy was ready for delivery on 7-1-1950, and was actually made over on 9-1-1950. The formal notice of the signing of the award was served on the applt., according to the affidavit, on 6-1-1950, though, according to the statement of the learned Advocate for the applt. it was on 7-1-1950. The statement on affidavit may be acted upon in preference to the statement at the Bar. The learned Stamp Reporter made a report to the effect that, as the appeals had been filed beyond six weeks from the date of the receipt of the notice of the signing of the award, they were out of time. After that report of the Stamp Reporter, these applns. under Section 5, Limitation Act, have been made for condoning the delay, and the grounds stated for doing so are that, to the petnr's knowledge, there was no limitation for filing

appeals provided under the Defense of India Act or the rules made thereunder; and that the petitioner was advised by his lawyer, a pleader of Bhagalpur, which advice he acted upon, that the ordinary period of ninety days provided for filing appeals to this Court would be applicable, and that he would get the benefit of the time requisite for obtaining a certified copy.

3. There is no doubt that, if the provisions of Section 5, Limitation Act, can be invoked in aid of the petitioner in the special circumstances of this case, sufficient grounds had been made out for condoning the delay. It has taken us some amount of research to find out the relevant provisions of the law regulating to appeals to this Ct. from an award of the nature aforesaid. It is true that neither the Defense of India Act nor the rules made thereunder by the Central Government contain any provisions relating to the period of limitation for filing appeals against an award of the nature contemplated by the Act and the rules. By a notification, dated 26-5-1943, by the Govt. of Bihar published in the Bihar Gazette (Extraordinary) of that date, rules have been framed called the Bihar (War Acquisition of Property) Compensation Rules, 1943. Rule 18 is in these terms :

"When the Arbitrator has made his award, he shall sign it and shall give notice in writing to the parties to the reference of the making and signing thereof. He shall also send a copy of the award to the person or persons to be compensated and forward to the Collector, the award in original together with the records of the proceedings."

And R. 20 which is the rule providing for a period of limitation, is in these terms :

"Any appeal against the award of the Arbitrator shall be preferred within six weeks of the receipt by the parties of the notice referred to in R. 18."

4. The relevant portions of Section 29, Limitation Act, are in these terms :

"(2) Where any special or local law prescribes for any suit, appeal or appln. a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that sch. and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law :

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

It will be seen from the provisions, quoted above, of Section 29, Limitation Act, that if these rules are within the purview of the words "special or local law" then Section 5, Limitation Act, is entirely out of the way. The sections of the Indian Limitation Act like Section 4, Sections 9 to 18

and Section 22 are to apply not entirely but only to the extent they are not expressly excluded by such special or local law.

5. It was attempted to be argued on behalf of the applt. that the special rule of limitation provided by the rules aforesaid do not come within the purview of special or local law and that, therefore, Section 29, Limitation Act, cannot stand in the way of the applt. But, in my opinion, there is no substance in this contention, because a special law means law enacted for special cases in special circumstances as distinguished from the general law which applies generally. The Limitation Act is an example of the general law of limitation which applies to all classes of cases dealt with by the Act. The rules framed under the Defense of India Act were rules made for purposes of emergency and the exigencies of the war.

6. It was next contended on behalf of the applt. that at least one of the cases, namely, Misc. Appeal No. 90, arose out of Case No. 1 of 1942-43 before the rules in question were promulgated. But the award has come into existence after those rules have been framed. Hence the award in question comes within the mischief of the rules which came into existence some years before the awards were made. Hence, the decision of a Division Bench of the Madras H. C. in *Kollegal Silk Filatures Ltd v. Province of Madras*¹, is of no assistance. In view of these considerations, it must be held that the applt. is not entitled to the benefit of Section 5, Limitation Act. The appeals must, therefore, be held to be barred by the special rule of limitation laid down by the rule quoted above made under the Defense of India Act.

7. The appeals must, therefore, be dismissed. There will be no order as to costs.

C.P. Sinha, J.

8. I agree.

Appeals dismissed.

Cases Referred.

¹ I.L.R. (1948) Mad. 490 : (A.I.R. (36) 1949 Mad. 89)