

ASHIS KUMAR HAZRA
v.
RUBI PARK CO-OPERATIVE HOUSING
SOCIETY LTD. AND ORS.

MAY 5, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

Limitation Act, 1963 :

Ss.5, 6, 14—Notice for arbitration under West Bengal Co-operative Societies Act, 1983—Limitation—Notice given on 26.10.1974—Suit filed in High Court on 10.9.75—High Court held the proceedings not maintainable but observed that since the petitioner was bona fide prosecuting the claim before the civil court, under s.14 the said period may be condoned—The application thereafter filed was dismissed by Registrar refusing to condone the delay for want of proper explanation—Held, the Registrar was right in not condoning the delay—Limitation prescribed is only two months after notice—From September 10, 1975 till date of disposal of matter in High Court on civil side the said period stands excluded, but explanation for delay from 26.10.1974 till the filing of the civil suit is required to be explained—It is duty of the Court to ensure that unless proper explanation is given the valuable right treated in favour of the respondent under s.6 is not defeated—West Bengal Co-operative Societies Act 1983-S.95(3).

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 11257 of 1997.

From the Judgment and Order dated 12.8.96 of the Calcutta High Court in C.O. No. 346 of 1993.

R.C. Verma and Chatanya Siddarth for the Petitioner.

The following Order of the Court was delivered :

We have heard learned counsel.

Under Section 95(3) of the West Bengal Co-operative Societies Act, 1983 any claim which arises between the society and its members etc. is required to be laid within two months from the date of the notice for

A arbitration. Notice was given on October 26, 1974 and the suit was filed on the original side of the High Court on September 10, 1975. Under sub-section (3) of Section 95, if an application is filed explaining properly the delay, the Court has been given power for condoning the delay. The High Court has held ultimately that the proceedings laid in the original side of the suit is not maintainable. However, since the petitioner was *bona fide* prosecuting the claims before the Civil Court, under Section 14 of the Limitation Act, the said period may be condoned. On an application having been properly made, *since the application came to be filed*, the Registrar has dismissed the petition saying that explanation was not properly given and, therefore, he refused to condone the delay. The writ petition was dismissed in Civil Order No. 346/1993 dated August 12, 1996. Thus, this special leave petition.

Shri R.C. Verma, learned counsel for the petitioner, contends that the High Court having held that since the petitioner was *bona fide* prosecuting the proceedings, under Section 14, the time spent for that purpose has to be excluded, the Registrar was wrong in refusing to condone the delay. We find no force in the contention. From September 10, 1975 till the date of disposal of the matter in the High Court on the civil side, by operation of the direction issued by the High Court under Section 14 of the Act, the said period stands excluded. However, the explanation for period of delay from October 26, 1974 till the date when civil suit came to be filed is required to be explained. The limitation prescribed is only two months after notice. Unless proper explanation is given, the valuable right has been created in favour of the respondents under Section 3 of the Limitation Act, it is the duty of the Court to ensure that unless proper explanation is given the valuable right cannot be defeated. Considered from this perspective, the Registrar was right in not condoning the delay.

The special leave petition is accordingly dismissed.

R.P.

Petition dismissed.