$~61 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CM(M) 705/2022 & CM APPL. 31978/2022, CM APPL. 31979/2022

DB CORP LTD ..... Petitioner

Through: Mr. Rajat Manchana, Ms. Tanya Singh and Ms. Radhika Jain, Advs.

versus

SHAILJA NAQVI & ORS. ..... Respondents

Through: Mr. Manu Mishra, and Ms. Shreya Dutt, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

% **21.07.2022**

[Ideally, as this case involved an allegation of sexual harassment at the workplace, the identities of the persons involved ought to have been masked, unless they consented to their disclosure. However, the learned Industrial Tribunal has not done so, and this is a petition under Article 227 emanating from the order of the learned Industrial Tribunal, in which the identities of the complainant and her alleged oppressor already stand disclosed.]

1. The issue in controversy, before me, is whether Section 5[1] of

[1] **5. Extension of prescribed period in certain cases**. – Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. – The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

the Limitation Act, 1963, would apply to appeals under Section 18[2] of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the SHW Act").

2. Respondent 1 accused Respondent 2 of having harassed her, sexually, at the workplace. The complaint was referred to an internal complaints committee of the petitioner which, *vide* inquiry report dated 24th May 2016, exonerated Respondent 2. Respondent 1 appealed thereagainst, under Section 18 of the SHW Act"), to the learned Central Government Industrial Tribunal ("the learned IT"). The impugned order, dated 3rd March 2022, passed by the learned Industrial Tribunal in RCA 343/2016 (***Shailja Naqvi v. DB Corp Ltd.***) condones the delay of 36 days in the preferring of the appeal.

3. Aggrieved, the petitioner has invoked Article 227 of the Constitution of India.

4. The petitioner has not chosen to question the jurisdiction or competence of the learned IT to entertain the appeal filed by Respondent 1.

5. The issue in controversy in the present case being only whether

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[2] **18. Appeal**.

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed

(2) *The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."*

the learned IT could have condoned the delay in filing of the appeal, by the respondent, under Section 18 of the SHW Act, no further reference to facts is necessary.

6. The contention advanced by the petitioner, both before the learned IT as well as before this Court, is that, as no provision for condonation of delay is to be found in Section 18 of the SHW Act, and as Section 18(2) uses the word "shall", the learned IT could not have condoned the delay in filing of appeal by the respondent.

7. On this submission, paras 9 to 11 of the impugned order read thus:

> "9. After having considered the arguments of both sides, I am of the considered view that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has come to protect the women from sexual harassment at work place to ensure women's rights for equality and liberty. This is the Act which is for the welfare of the women, to bring the women force to equal status at work place and to protect the sexual harassment may be at work place. This Tribunal is of the considered view that the basic idea to implement this Act has been mentioned in preamble of this Act, which provides:
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> > "An. Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. "
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> 10. This Tribunal is of the considered view that by exclusion of the Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013 at work place certainly caused an obstacle to the implementation of rights for equality for the women as a woman might have suffered sexual harassments, may not be

> in a position for a certain time due to sexual harassment, to raise her grievance within a specific period though as per the provisions of Act which should be in the prescribed period of limitation but certainly the Tribunal has to consider various obstacles which might have been there for the applicant to prefer and to file the present appeal.
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> 11. As per the application, there were various circumstances mentioned as counsel of appellant faced unprecedented family circumstances, including medical circumstances, which have been mentioned in detail in the application. This Tribunal also considered those circumstances and is of the view that it will be in the interest of justice that the delay should be condoned and accordingly, delay of 36 days in filing the present appeal is condoned in the interest of justice."

8. Section 5 of the Limitation Act, 1963, submits Mr Manchanda arguing for the petitioner, would not apply in a case such as this, for which purpose he places reliance on ***Commissioner of Customs & Central Excise v. Hongo India Pvt. Ltd.***[3].

9. In my opinion, having read ***Hongo India***[3] with the assistance of learned Counsel, the issue in controversy in the present case would appear to be fully answered against the petitioner in the said decision.

10. Before proceeding to ***Hongo India***[3], however, it must be noted that Section 29(2)[4] expressly makes Section 5 of the Limitation Act applicable to "any suit, appeal or application" which provides for a

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[3] **(2009) 5 SCC 791**

[4] **29. Savings**. –

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> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

period of limitation different from the period specified in the Schedule to the Limitation Act. In applying this provision, the provisions of the special law have to be scrutinized in detail, so as to determine whether is any express or implied exclusion, therein, of the provisions of the Limitation Act[5].

11. So scrutinized, it is clear that Section 18(2) of the SHW Act postulates a period of limitation, for filing an appeal under Section 18(1), not to be found in the Limitation Act. Equally, it is clear that no express or implied exclusion of the Limitation Act, and its provisions, is to be found anywhere in the SHW Act.

12. Proceeding, now, to ***Hongo India***[3].

13. ***Hongo India***[3] dealt with the issue of whether delay, in filing of an application for a direction to the Customs, Excise and Service Tax Appellate Tribunal ("the CESTAT") to refer, to the High Court, a question of law arsing from an order passed by it, under Section 35-H of the Central Excise Act, 1944 , was condonable. The Supreme Court scanned the various provisions of the Central Excise Act, especially Sections 35-B, 35-EE, 35-G, and found that the said provisions superficially provided for condonation of delay. As such, where the Central Excise Act envisaged condonation of delay in preferring appeals or application, it specifically so provided. As no such provision for condonation of delay, apropos applications under Section 35-H of the Central Excise Act, found place therein, the Supreme Court held that it was not permissible to seek recourse to

[5] **Bhakra Beas Management Board v Excise & Taxation Officer, (2020) 17 SCC 692**

Section 5 of the Limitation Act for condonation of delay in filing such an application. In this context, para 32 of the decision in ***Hongo India Pvt. Ltd***[1] may be reproduced thus:

> "32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. *In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act.* The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."
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> (Emphasis supplied)

14. Admittedly, in the present case, there is, unlike the position that obtained in the case of the Central Excise Act in ***Hongo India***[3], no other provision in the SHW Act which provides for condonation of delay. Unlike the Central Excise Act, which specifically contemplated and provided for condonation of delay under other provisions, but did not so provide in Section 35-H, there is no provision at all in the SHW Act, providing for condonation of delay. In such circumstances, ***Hongo India***[3] cannot be treated as an authority which proscribes recourse to Section 5 of the Limitation Act, where there is delay in preferring in appeal under Section 18 of the SHW Act.

15. Para 35 of the report in ***Hongo India Pvt. Ltd***[1] is also instructive in this regard. It reads thus:

> "35. It was contended before us that the words "expressly excluded"[6] would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. *If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act.* In our considered view, that *even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation*. In other words, *the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court*."
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> (Emphasis supplied)

16. A reading of para 35 of the report reveals that, where the Court is dealing with a statute which does not provide for condonation of delay, the Court is required to examine the provision under which the appellate, revisionary or other remedy is provided, in the backdrop of the purpose of the Act, the nature of its subject matter and its scheme to assess whether delay is condonable.

17. Incidentally, the same principle finds enunciation in para 49 of the judgment of the Supreme Court in ***New India Assurance Company Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd***[7], which reads thus:

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[6] **in Section 29(2) of the Limitation Act**

[7] **(2020) 5 SCC 757**

"49. In the said case of ***J. J. Merchant***[8], while holding that the time limit prescribed would be mandatory and thus be required to be strictly adhered to, this Court also considered the Statement of Objects and Reasons of the Consumer Protection (Amendment) Bill, 2002 (which was subsequently enacted as Act 62 of 2002 and has come in force w.e.f. 15.03.2003). The salient features of the same was "to provide simple, inexpensive and speedy justice to the consumers………" and that "the disposal of cases is to be faster" and after noticing that "several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act" and with a view to achieve quicker disposal of consumer complaints, certain amendments were made in the Act, which included "(iii) prescribing the period within which complaints are to be admitted, notices are to be issued to opposite party and complaints are to be decided". With this object in mind, in subSection (2)(b)(ii) of Section 13, the opening sentence "on the basis of evidence" has been substituted by "ex parte on the basis of evidence". By this amendment, consequences of not filing the response to the complaint within the specified limit of 45 days was to be that the District Forum shall procced to settle the consumer dispute ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take action to represent his case within time. For achieving the objective of quick disposal of complaints, the Court noticed that sub-Section (3A) of Section 13 was inserted, providing that the complaint should be heard as expeditiously as possible and that endeavour should be made to normally decide the complaint within 3 months, and within 5 months where analysis or testing of commodities was required. The Provisos to the said sub Section required that no adjournment should be ordinarily granted and if granted, it should be for sufficient cause to be recorded in writing and on imposition of cost, and if the complaint could not be decided within the specified period, reasons for the same were to be recorded at the time of disposing of the complaint."

18. Para 46 of the report in ***New India Assurance Company Ltd***[2] is also instructive, in the backdrop of the present controversy, which

[8] **(2002) 6 SCC 635**

reads thus:

> "46. Again, in the case of ***Salem Advocates Bar Association***[9], this Court was dealing with a case under Order VIII Rule 1 of the Code and in paragraph 20, it has been held as under:
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>> "20.………The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice." "

19. The use of the word "shall" in Section 18(2) of the SHW Act cannot be treated as determinative of the issue.

20. Applying para 46 of ***New India Assurance Company Ltd***[2], in conjunction with para 35 of ***Hongo India Pvt. Ltd***[1], to the facts of the present case, the approach of the learned IT is completely unexceptionable and is in accordance with the scheme of SHW Act.

21. The SHW Act is an ameliorative statute, intended to redress a serious social evil. It cannot be gainsaid that victims of sexual harassment at the workplace suffer untold trauma, mental, physical and spiritual. Equally, there is, unquestionably, substance in the contention of the learned Counsel for the petitioner that, in this context, that a person who is unjustly alleged to have committed

[9] **(2005) 6 SCC 344**

sexual harassment is as much a victim of trauma as a person who has been subjected thereto.

22. This Court is entirely in agreement with the observations of the learned IT, in this regard, that a victim of sexual harassment remains in a state of trauma and it cannot be expected that she would immediately rush to a Court seeking appellate remedies. It would be completely antithetical and inimical to the very scope and purpose of the SHW Act, if a Court were to refuse to condone a delay of as little as 36 days in an alleged victim of sexual harassment preferring an appeal under Section 18 against the report of the inquiry committee.

23. Such a delay – if properly explained – should, clearly, not stand in the way of the appeal of the alleged victim of sexual harassment being decided on merits, by the authority competent to do so.

24. Having said that, it is clarified that these observations are only intended to justify the power of condonation of delay, which the learned IT has exercised. They do not, in any manner, amount to an expression of opinion, one way or the other, on the allegations of sexual harassment forming subject matter of proceedings in the present case. They should not, therefore, influence the learned IT in taking a dispassionate view on the appeal filed by the respondent.

25. In view of the aforesaid legal position, I am of the opinion that Section 5 of the Limitation Act would apply in respect of appeals which may be sought to be preferred under Section 18 of the SHW Act.

26. The decision of the learned IT to accept the grounds urged in the application for condonation of delay does not, in any manner, brook interference under Article 227 of the Constitution of India.

27. For the aforesaid reasons, I find no reason to interfere with the impugned order of the learned IT.

28. The petition is accordingly dismissed *in limine*.

C. HARI SHANKAR, J.

JULY 21, 2022
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