

Supreme Court of India

Ashis Kumar Hazra vs Rubi Park Co-Operative Housing ... on 5 May, 1997

Bench: K. Ramaswamy, D.P. Wadhwa

PETITIONER:

ASHIS KUMAR HAZRA

Vs.

RESPONDENT:

RUBI PARK CO-OPERATIVE HOUSING SOCIETY LTD. & ORS.

DATE OF JUDGMENT: 05/05/1997

BENCH:

K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

**O R D E R** 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 arbitration. Notice was given on October 26, 1974 and the suit was filed on the original side of the Civil 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 refuse 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 September 10, 1975 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.