

Sarojini Devi Vs Bevi Pathummal and Others

Court: High Court Of Kerala

Date of Decision: Aug. 28, 1987

Acts Referred: Limitation Act, 1963 " Section 14, 5

Hon'ble Judges: M.M. Pareed Pillay, J

Bench: Single Bench

Advocate: C.V. Vasudevan, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, J.

Revision Petitioner is the Plaintiff in O.S. No. 190 of 1968 on the file of the Munsiff's Court, Punalur. She filed

C.M.A. No. 2702 of 1982 before the Sub Court, Kottarakkara. I.A. 1182 of 1982 was filed to condone the delay in filing the appeal. The

petition was dismissed. Consequently the CMA was also dismissed.

2. The Sub-Judge condoned the delay for the period from 26th Nov., 1982 to 1st Dec., 1982. But the petition was rejected on the ground that

there was no explanation for the delay in representing the appeal before the Sub-Court, Kottarakkara on 4th Dec., 1982.

3. C.M.A. was filed before the District Court on 1st Dec., 1982. That was wrongly instituted in that Court. It should have been filed before the

sub-Court, Kottarakkara. The District Court returned the appeal to the Sub-Court on 3rd Dec., 1983. Before the Sub-Court the appeal was

presented on 4th Dec., 1982. The Ld. Sub-Judge held that even if the delay of 5 days is condoned no purpose will be served as there is no prayer

to condone the delay after 1st Dec., 1982.

4. The Cardinal policy of the provision in Section 14 of the Limitation Act is to furnish protection against the bar of limitation to a person who

honestly and diligently solicits a trial on merits in a forum having no Jurisdiction and which forum cannot afford him such a trial. Such a relief cannot

be denied to a person who due to the technical plea is forced to choose the right forum provided he had acted in good faith and with due diligence.

Though Section 14 in terms applies to suits and applications only and not to appeals the circumstances envisaged in the section can very well

constitute a "sufficient cause" within the purview of Section 5 of the Act for the purpose of appeals also. In Munshi Vs. Punna Ram, it is held as

follows:

Though Section 14 in terms applies to suits and applications only and not to appeals, the circumstances contemplated in the section can justifiably

be taken to constitute a "sufficient cause" within the meaning assigned to that phrase in Section 5 for purposes also.

5. In I.A. 1182 of 1982 there is specific and clear prayer for condoning the delay in filing the appeal before the Sub-Court, Kottarakkara. As the

delay has been satisfactorily explained by the averments in the affidavit, I hold that the petition has to be allowed. The order in I.A. No. 1182/82 is

set aside and the I.A. is allowed condoning the delay.

6. The Civil Revision Petition is allowed. The Sub-Judge is directed to dispose of the C.M.A. in accordance with law. Parties will appear before

the Sub-Court, Kottarakkara on 30th Sept., 1987.

Send bank the records immediately to that Court.