

(2016) 07 MP CK 0057

MADHYA PRADESH HIGH COURT

Case No: C.R. No. 07 of 2016

Dr. Shantilal

APPELLANT

Vs

Modiram

RESPONDENT

Date of Decision: July 29, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 16 Rule 27 (b)

Citation: (2016) 166 AIC 668

Hon'ble Judges: Shri. Alok Verma, J.

Bench: Single Bench

Advocate: Shri. R.M. Deshpande, learned counsel, for the Applicant; Shri. M.N. Tiwari, learned counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shri. Alok Verma, J.—This civil revision is directed against the order passed by the learned 8th Additional District Judge, Indore in Regular Civil Appeal No.14/2011 dated 18.11.2015 whereby the learned Additional District Judge condoned delay in filing of the appeal finding that the reasons stated in the application were real, bona fide and arose on humanitarian grounds, and therefore, proceeded to condone the delay.

2. Relevant facts giving rise to this revision are that the appellant filed a suit before the learned Civil Judge Class-I, Indore which was registered as Civil Suit No.24-A/2009 for eviction, arrears of land and mesne profit. The suit was dismissed, and therefore, aggrieved by the judgment and decree, the appeal was filed. This regular civil appeal was filed by a delay of 27 days. The reasons stated was that after the impugned judgment and decree was passed, brother of the plaintiff-Chandmal died. It is further stated that plaintiff is suffering from ailment in his backbone and for this, he produced medical certificates issued by one Dr. I. Nabi.

3. The application was opposed by the applicant before this Court on the ground that the relationship between both the brothers were not cordial and they were not on speaking terms. He never attended his last rites and it is also stated that he was not suffering from any disease in his backbone and the medical certificates produced by the appellant was a forged one. The concerning doctor was not examined as plaintiff's witness before the trial court.

4. The learned trial court proceeded to believe the medical certificates produced by the applicant and he also believe the factum of death of his brother and finding that the appellant satisfactorily explained the delay caused in filing of the appeal and allowed the application and condoned the delay.

5. Aggrieve by this order, this revision is filed by the defendant before this Court.

6. Learned counsel appearing on behalf of the respondent vehemently opposed the revision on the ground that the civil revision is not maintainable. He places reliance on judgment of Hon'ble Apex Court in case of Gurdev Singh v. Mehnga Ram in which it was held that the order allowing additional evidence under Order 41, Rule 27 (b) CPC is not a revisable order as the final order is yet to come and learned counsel submits that the present order condoning the delay is not a revisable order and only an interim order. However, the argument put forth by the respondent does not appear to have any force. The present order is such that if it is reversed, the appeal would be dismissed as time barred, and therefore, this order is revisable and so far as this aspect is concerned, this revision is maintainable.

7. Learned counsel for the respondent further submits that application was decided after recording of evidence. According to him, the evidence produced by him cannot be looked into in a revision. For this, he places reliance on judgment of Hon'ble Apex Court in case of **Yunis Ali (Dead) thru his L.Rs. v. Khursheed Akram; AIR 2008 SC 2607** that matter belonged to non payment of arrears of rent and determination of provisional rent by the Court. That case of provisional rent fixed by the trial court was held proper by the appellate Court and then the matter travelled upto Hon'ble Apex Court. However, in this case, the order was passed on basis of the evidence, as the grounds taken by the appellant based on facts, and therefore, this argument is also not acceptable.

8. Learned counsel for the applicant submits that the appellant below examined himself and produced the medical certificates, however, these medical certificates were not properly proved, as they were issued by the medical practitioner, who were not examined by the appellant before the court. According to him, the certificates were the forged one and burden to prove that they were genuine certificates, issued by a medical practitioner lies on the appellant below. He failed to discharge his burden and learned appellate Court below erred in placing the burden of proof on the defendant.

9. I have gone through the impugned order, the medical certificates can be proved either by the medical practitioner or by the appellant himself because he is the competent witness to prove that he suffered from disease and that he consulted the particular doctor.

10. In this view of the matter, the learned court below had not erred in placing the burden on the respondent. If according to him, the certificates were forged one, then the burden lies on that person, who alleges forgery, and therefore, there appears to be no illegality committed by the appellate Court. Also purpose of recording evidence is to satisfy the Court about bonafides and genuineness of the reasons stated for the delay in this case, the appellant sufficiently explained the delay, and therefore, no interference is called for in this civil revision.

11. Accordingly, this revision is dismissed.