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## Dr. Abhishek Goyal Vs Union Of India

Court: MADHYA PRADESH HIGH COURT

Date of Decision: March 7, 2017

Acts Referred: <u>Code of Civil Procedure</u>, <u>1908</u>, <u>Section 100</u> - Second appeal <u>Limitation Act</u>, <u>1963</u>, <u>Section 5</u> - Extension of prescribed period in certain cases

Hon'ble Judges: Ashok Kumar Joshi

Bench: Single Bench

Advocate: Bhanupratap Yadav, Shobhna Sharma

## **Judgement**

1. The appellants/original plaintiffs have filed this second appeal under Section 100 of the CPC against the order dated 17.06.2014 passed by the

First Additional District Judge, Multai, District Betul, in an unregistered appeal of 2011, dismissing the application filed by the appellants under

Section 5 of the Limitation Act for condonation of delay along with the appeal memo against the judgment and decree dated 23.02.2007 passed

by the Civil Judge, Class-I, Multai, in Civil Suit No.66A/2005. The above-mentioned Appellate Court has dismissed the application filed by the

appellants for condonation of delay along with an appeal as being time barred. The trial Court had dismissed the civil suit filed by the present

appellants for declaring their 1/3 share title and possession in relation to disputed lands bearing Survey Nos.150 & 177 of Gram Sunara of Tahsil

Multai, District Betul.

2. Appellants have filed appeal memo before the First Appellate Court along with an application under Section 5 of the Limitation Act pleading

that after passing of the judgment of the trial Court, he had given fees and vakalatnama to his advocate for filing appeal before the District Court

against the judgment and decree of the above-mentioned trial Court and thereafter he was regularly paying advocate"s fee relating to civil appeal

and he was being intimated by his counsel that his appeal is pending before the Court. Thereafter, in a pending revenue appeal, appellants were

required to file the copy of the appeal memo filed by them before the District Court, then he inquired from his advocate about pending appeal, then

his relating advocate did not give any definite information about pendency of the appeal and caused him to wandering for a period of three months

for getting copy of the appeal memo. Then appellants contacted an another advocate Shri Alok Soni for receiving of the copy of appeal memo,

then for the first time on 15.09.2011, he received information that actually no any appeal has been filed by his previous counsel. Thereafter, he filed

application on 23.02.2007 to obtain the certified copy of the judgment and decree. Thus, delay has occurred in filing the appeal, which is bonafide

and that should be condoned. An affidavit of appellant No.3 Shrawan was filed in support of above-mentioned application.

3. The above-mentioned application filed under Section 5 of the Limitation Act was opposed by the respondents before the lower Appellate Court

on the grounds that the appellant had even not disclosed the name of his previous counsel to whom he had allegedly paid the advocate's fees for

filing appeal before the District Court. Actually the alleged revenue appeal was decided by the Appellate Revenue Court on 31.03.2011, thus the

fact mentioned that on 15.09.2011, for the first time appellant received information that his previous counsel had not filed any civil appeal before

the lower Appellate Court is totally false and unreliable. Thus, it was prayed that the application filed by the appellants for condonation of delay be

dismissed and appeal should also be dismissed as being time barred.

4. The First Appellate Court had recorded its finding in impugned order dated 17.06.2014 that the appellant has not even disclosed the name of

his previous counsel to whom he had paid fees and instructed for filing appeal before the District Court and the subsequent copying application

was filed by the appellant on 19.09.2011 and relating certified copies were received by appellant on 21.09.2011, but thereafter appeal with

above-mentioned application was filed on 20.10.2011 and no any explanation was offered by the appellant for the period spent between

21.09.2011 to 20.10.2011. It was observed that appellant remained unsuccessful in establishing any bonafide reason for condonation of abnormal

delay of about 4 years 6 months and 25 days and thus, the above-mentioned application was dismissed and appeal was also dismissed as being

time barred.

5. The learned counsel for the appellants has relied on the citations of S. Ganesharaju (Dead) through LRs & another Vs. Narasamma (Dead)

through LRs & others [(2013)11 SCC 341] and Imrat Lal & others Vs. Land Acquisition Collector & others [(2014)14 SCC 133] and

contended that the First Appellate Court had erred in dismissing the application filed by the appellants.

6. The facts of the citations referred by the learned counsel for the appellants and the present case are easily distinguishable. In this case, according

to appellants themselves they were aware of the date of judgment and decree passed by the learned trial Court and had paid advocate"s fee and

instruction to their counsel for filing regular civil appeal before the concerned Appellate Court. But, even the name of the previous counsel who was

instructed by the appellant to file civil appeal and paid advocate"s fee has not been disclosed in affidavit of the appellant No.3. It is clear that the

Appellate Court had considered each relevant fact and circumstance in impugned order and it appears that there is no any perversity in the findings

of the above-mentioned Appellate Court"s order.

7. In view of above, I am of the considered view that there is no substance or circumstance in the matter giving rise to any question of law rather

than substantial question of law. The question of facts raised by the appellants does not call for any interference. Consequently, the appeal fails and

is hereby dismissed in limine. No costs.