

(2017) 04 MP CK 0109
MADHYA PRADESH HIGH COURT
Case No: 1060 of 2016

Ram Bhushan Paroha

APPELLANT

Vs

Ganeshwar Singh and others

RESPONDENT

Date of Decision: April 28, 2017

Acts Referred:

- Limitation Act, 1908, Section 14, Section 5

Hon'ble Judges: Vijay Kuma Shukla

Bench: Single Bench

Advocate: Pushpendra Dubey, Rakesh Kumar Jain

Judgement

1. Heard on admission.

The appeal is admitted for hearing on the following substantial question of law :

Whether the Lower Appellate Court erred in dismissing the appeal as barred by limitation, though the delay for sufficient cause was explained in terms of Section 5 of Indian Limitation Act and the law laid down by the Apex Court in that regard.? With the consent of the parties, the appeal is also heard finally.

Brief facts necessary for adjudication of the present appeal are that the appellants/plaintiffs filed a suit for declaration of their entitlement of equal share with the defendant no.1 in respect of the sale consideration, which has been deposited with the Bank received from the sale of the ancestral property. The suit was dismissed by the trial court vide judgment and decree dated 08-07-2015, passed in Civil Suit No.31-A/2015.

2. Being aggrieved by the aforesaid judgment and decree , the appeal was filed after expiration of the period of limitation of 30 days alongwith an application for condonation of delay. The said appeal has been dismissed as barred by limitation rejecting the application for condonation of delay. Challenging the aforesaid judgment and decree, the present appeal has been filed and this court has admitted the appeal, as substantial question of law arises for consideration as under :
???Whether the Lower Appellate Court erred in dismissing the appeal as barred by limitation, though the delay for sufficient cause was explained in terms of Section 5 of Indian Limitation Act and the law laid down by the Apex Court in that regard.?

3. It is contended by the learned counsel for the appellants that the appellants did not receive any communication about the judgment and decree from the Advocate, who was representing in the trial court. When the appellant/plaintiff Nandkishore contacted the Advocate to know about the progress of the case then on 08-01-2016, he came to know about the dismissal of the suit . On the same day, an application was made through another counsel for obtaining certified copy. Certified copy was received on 22-01-2016 and on the very next day i.e.23-01-2016, the present appeal was filed.

4. The Lower Appellate Court dismissed the appeal on the ground that the appellants could not explain the delay properly.

5. Before advertng to the legal provisions and the judgments of the Apex Court regarding the consideration for an application for condonation of delay, it is apt to reproduce the paras 2 to 4 of the application filed under section 5 of the Indian Limiation Act.

"VERNACULAR MATTER OMITTED"

6. Learned counsel for the appellants submitted that instead of adopting such hyper technical and strict view in the matter of condonation of delay, the Appellate Court ought to have taken liberal view in the matter.

7. Per contra, learned counsel for the respondents submits that there is no illegality in the impugned order and since the appellants have failed to explain the delay, therefore, the Lower Appellate Court has rightly dismissed the appeal as time barred.

8. Before advertng to the legal provision of law in the field of condonation of delay, it is apposite to refer the provisions of Section 5 of the Indian Limitation Act, which is reproduced as under :

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 (5 of 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 Apex Court in the case of G.Ramagowda Vs. Special Land Acquisition Officer, AIR 1988 SC 897 held as under :

The expression "sufficient cause" in section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.???

Prior to this, the Apex Court in the case of Collector, Land Acquisition, Anantnag and another Vs. Mst.Katiji and others, (1987)2 SCC 107, held that to determine the word "sufficient cause", courts should adopt a liberal and justiceoriented approach.

9. In the case of State of Bihar Vs. Kameshwar Prasad Singh, (2009)9 SCC 94, the same view has been reiterated that a lenient view should have been taken by the Lower Appellate Court. Relying on the same judgment, a Coordinate Bench of this court in the case of Salikram and others Vs. Keshav and others, 2012(1) MPHT 409, held that the appeal should not have been dismissed merely on technical ground of delay and a liberal view should have been taken.

10. In the case of Ramlal and others Vs. Rewa Coalfields Ltd. AIR 1962 Supreme Court 361, the Apex Court held that question of diligence during the period of limitation is not relevant in considering the application under Section 5 of the Indian Limitation Act. It becomes relevant only when the question of exercising discretion to condone the delay under section 14 arises.

11. In the light of the aforesaid authoritative pronouncement of the Apex Court and taking into consideration the facts of the present case and the averment made in the application for condonation of delay that the appellants did not receive any communication from the Advocate till one of the appellant contacted the counsel to

know about the progress, I find sufficient cause and the Appellate Court ought to have condoned the delay and decided the appeal on merit. Nothing contrary material is brought to the notice of this court by the respondents that there was communication or knowledge of the judgment and decree passed by the trial court.

12. In view of the aforesaid, this appeal is allowed as it is found that the impugned judgment and decree is contrary to the law laid down by the Apex Court and this court in respect of Section 5 of the Indian Limitation Act. The impugned judgment and decree passed by the Lower Appellate Court is set aside. The case is remitted back to the Lower Appellate Court with a request to treat the first appeal of the appellant as within limitation and to hear and decide the same expeditiously preferably within a period of 4 months from the date of production of the certified copy of the judgment and decree passed today. Parties are since represented before this court, they are directed to remain present before the Lower Appellate Court on 18-05-2017 alongwith a certified copy of the order passed today.

13. The Registry is directed to send back the records of the courts below immediately to the Lower Appellate Court for the purpose of hearing of the first appeal.

14. With the aforesaid, the appeal is allowed and finally disposed of.