

(2000) 01 DEL CK 0071
In the Delhi High Court
Case No : C.R. No. 870/84

Abdul Shakur

APPELLANT

Vs

Sh. Barkat Ali

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Limitation Act, 1963 — Section 5

Citation : (2000) 3 AD 23 : (2000) 84 DLT 214 : (2000) 53 DRJ 418

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Sanjay Aggarwa, I Adv, for the Appellant; Ms. Ragini Trakroo, for the Respondent

Judgement

K. Ramamoorthy, J.—The judgment debtors, who had suffered a decree on 6.12.1957, are the petitioners in the revision petition. They have been successfully resisting the enforcement of the decree. A few facts which are necessary for the disposal of the revision petition could be stated thus.

The parties hereinafter referred to as the petitioners in the revision petition and the respondents in the revision petition. The first respondent died during the pendency of the revision petition and his legal representatives have been brought on record.

2. The predecessor-in-interest of the respondents obtained a decree for possession from the Rent Controller Court on 6.12.1957. The petitioners preferred an appeal before the Appellate Court on 4.8.1958. The appeal was dismissed. The predecessor-in-interest of the respondents had to apply u/s 19 of the Slum Areas (Clearance & Improvement) Act, 1956. That was rejected by the Competent Authority under that Act. Thereafter, the predecessor-in-interest of the respondents sold the property to the respondents.

3. After their purchase, the respondents applied for permission to the Competent

Authority u/s 19 of the Slum Areas (Clearance & Improvement) Act, 1956. On 30.10.1971 the Competent Authority granted permission to the respondents. The respondents filed execution petition on the strength of that permission granted by the Competent Authority. In that execution petition, the petitioners filed objections. One of the objections was that the transfer of the decree, which had been passed on the basis of personal bona fide requirement of Sh. Manak Chand (predecessor-in-interest of the respondents) under the Delhi & Ajmer Rent Control Act, 1952 was illegal and void ab-initio and, Therefore, the decree was not executable at the instance of the respondents.

4. During the pendency of the execution petition, the petitioners instituted a suit for injunction restraining the respondents from executing the decree. On 1.12.1972 the learned Sub-Judge 1st Class dismissed the suit as being not maintainable in view of the provisions of Order 47 C.P.C. That judgment had become final.

5. On 20.2.1980 Mr. R.N. Jindal, the learned Sub-Judge 1st Class rejected the objections filed by the petitioners and directed the enforcement of the decree. On 5.3.1980 the petitioners preferred an appeal against that order passed by Mr. R.N. Jindal, Sub-Judge 1st Class rejecting the objections of the judgment debtors. On 23.9.1981 the appeal was dismissed by the appellate court on the ground that it was not maintainable.

6. On 7.11.1981 the petitioners filed a review petition before the Executing Court seeking to review of the order passed by Mr. R.N. Jindal, Sub-Judge 1st Class, Delhi. Along with the review petition an application for condoning the delay in filing the review petition was also filed. Mr. P.K. Dham, the learned Sub-Judge 1st Class by order dated 10.9.1982 condoned the delay in filing the review petition and allowed the review petition.

7. The respondents preferred R.C.A. No. 7/84 before the Additional District Judge. By order dated 17.9.1984 the learned Addl. District Judge allowed the appeal taking the view that the petitioners had not made out any case for condoning the delay in filing the revision petition. That is the order that is challenged in the revision petition by the petitioners.

8. The learned counsel for the petitioners submitted that the learned Addl. District Judge erred reversing the order of the learned Sub-Judge 1st Class. The Competent Authority under the Slum Areas (Clearance & Improvement) Act, 1956 passed an order dated 30.10.1971 granting permission and that was illegal. The learned Addl. District Judge erred in coming to the conclusion that review petition was time barred. The petitioners were under wrong impression of law when they filed appeal against the order passed by the learned Sub Judge 1st Class rejecting their objections and, Therefore, they were well within their rights in filing the review petition.

9. The petitioners have challenged the order of the Addl. District Judge allowing the appeal on the ground that the review petition was barred by time and the

learned Sub-Judge 1st Class committed an error in seeking the review when the matter was not within the provisions of Order 47, Rule 1 C.P.C.

10. The learned Addl. District Judge had also taken the view that the learned Sub Judge 1st Class while reviewing the order passed earlier on 20.2.1980 had assumed that the learned Judge could exercise power u/s 151 CPC which cannot be sustained.

11. On facts it is clear that the petitioners objections were rejected by Mr. R.N. Jindal, Sub Judge 1st Class on 20.2.1980. The review petition was presented on 7.11.1981 and as such there was delay of 567 days in filing the review petition. The petitioners sought exclusion of time taken by them by preferring an appeal against the order dated 20.2.1980 and according to the petitioners after the dismissal of the appeal by the appellate court on 23.9.1981 there was only about 40 days delay as they could obtain the copy of the order only on 23.9.1981. The learned Sub-Judge 1st Class while allowing the review and considering the application for delay observed :-

"Keeping in view the peculiar circumstances under which judgment debtors filed an appeal which was held to be not competent. Since no appeal was maintainable against the order, the time spent by the judgment debtor in appeal is to be excluded Since no appeal was maintainable and the appeal having been dismissed, the review application/petition is maintainable. Even otherwise, the Court has ample power u/s. 151 CPC to come to the rescue of a litigant whether there is a flagrant violation of a particular statute."

12. The lower appellate Court had taken the view that the learned Sub Judge 1st Class had committed an error in condoning the delay and assuming that the Court could exercise power u/s. 151 C.P.C. for reviewing the order.

13. The learned Addl. District Judge had taken the correct view with reference to the delay in filing the review petition. The petitioners had not at all shown sufficient cause for the delay in filing the review petition. Their confession as it were, that they were not aware of the law and, Therefore, they preferred an appeal to the appellate authority and the time taken for prosecuting the appeal should be excluded cannot at all be accepted. Thus, the delay in filing the application for review by the petitioners stand dismissed.

13. In view of this, other questions raised by the petitioners need not at all be gone into.

14. Accordingly, the revision petition stands dismissed. There shall be no order as to costs.