
(1997) 07 MP CK 0052
In the Madhya Pradesh High Court
Case No : F.A. No. 170 of 1996

Bank of India

APPELLANT

Vs

Sawai Singh and Others

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Citation : (1998) 92 CompCas 522 : (1998) 1 MPLJ 534

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : R.C. Pandey, for the Appellant; L.P. Bhargava and S.R. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.

Counsel for the appellant prays for condonation of delay of 16 days in filing the appeal.

Shri Pandey submitted that the bank had instructed counsel to file the appeal before the vacation started, but on account of mistake of calculation on the part of the advocate, the appeal could not be filed in the court within time. He pointed to the affidavits of two advocates who were dealing with this matter before the filing of this appeal. He pointed out that both the advocates have stated on solemn affirmation that on account of mistake on their part in calculating the period of limitation, there has been delay in filing this appeal. He submitted that the delay be condoned.

Shri L.P. Bhargava submitted that the matter is not so innocent as it is being shown. He pointed out that the impugned decree was passed on January 20, 1996, however, the application for certified copy of impugned judgment and decree was submitted on January 21, 1996. Shri Bhargava further pointed out that thereafter the decision was to be taken by the bank as to whether the appeal is to be filed or not. He further pointed out that the bank is equipped with

legal advisers and, therefore, the plea of mistake of calculation on the part of the advocates cannot be helpful to the appellant for the purpose of praying for condonation of the delay.

While considering the delay condonation application, the court has to be circumspect of the surrounding circumstances. By such defaults, the party in whose favour a decree has been passed acquires a legal right of executing such decree. If the appellant is negligent and not preferring the appeal against such decree within time, he is obliged to explain the delay satisfactorily. Delay of every day has to be explained in a satisfactory way. A right which such decree holder acquires cannot be ignored and brushed aside lightly. The court has to give due attention to such application and to find out whether delay has been satisfactorily explained or not.

The banks, such other institutions and corporations cannot be equated with the laymen and the villagers. Because, banks, such other institutions and corporations are equipped with legal advisers, some of them are having a legal cell to deal with such matters. When banks, such institutions and corporations are entrusted with the duty of safeguarding the public funds, realising the public funds properly, they are expected to be more diligent on their part. Lethargy and red-tapism have no place in the affairs of banks, such institutions and corporations as well as public bodies entrusted with the duty of rendering service to the public. The tendency is increasing to take advantage on the ground of mistakes on the part of advocates in the calculation of the period of limitation. But there has to be a limit to it. An advocate who happens to be a junior advocate may commit such mistakes in calculating the period of limitation on account of lack of knowledge and experience at the Bar. But if he happens to be an advocate with some years of experience at the Bar of conducting trials and proceedings, such ground will have to be considered with different criteria. It is true that the party should not suffer on account of mistakes committed by his advocate. That may be applicable to laymen and the villagers in a majority of cases. It is true that mistakes are committed by human beings but each case will have to be examined carefully. The advocates and parties cannot be permitted to make capital out of the ground of such mistakes if the circumstances of the matter indicate otherwise. Banks, corporations, such institutions and Government machinery cannot be permitted to rest solely and frequently on such grounds for the purpose of praying for condonation of delay as a rule. If their officers are blamable for negligence, utter negligence and total carelessness then the criteria would be different. The delay condonation applications in such cases will have to be dismissed if the grounds shown are not satisfactory. This satisfaction indicates reasonable scrutiny based on reasons. The persons working in the public field and entrusted with a duty towards public and public funds cannot afford to be negligent in their duty. Now, the time has come that there should be a message of alertness amongst all of them for securing public service and safety of public funds in real spirit.

Thus, after a careful scrutiny of the material which has been placed before me in this case, I come to the conclusion that the delay has not been satisfactorily explained. Thus, the delay condonation application stands dismissed. Consequently, the appeal stands dismissed as barred by limitation.