

(1995) 03 MP CK 0043
In the Madhya Pradesh High Court
Case No : L.P.A. No. 89 of 1989

Central Bank of India

APPELLANT

Vs

Devdatt Shukla and Another

RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 1995 MP 214 : (1995) JLJ 356 : (1995) 40 MPLJ 890 : (1995) MPLJ 890

Hon'ble Judges : P.N.S. Chauhan, J; D.K. Jain, J

Bench : Division Bench

Advocate : G.C. Bhatia, for the Appellant;

Final Decision : Allowed

Judgement

P.N.S. Chouhan, J.

The appellant is a nationalised bank. It presented Civil Suit No. 2-B/1979 for recovery of Rs. 44,058.00 from the respondents which was dismissed on 30-3-1988 by IIIrd Additional Judge to the Court of District Judge, Bilaspur on merits. An appeal against that judgment and decree was presented before this Court on 8-8-1988. It ought to have been presented latest on 6-8-1988 which was the last date of limitation. 7-8-1988 was Sunday. An application for condonation of the said two days delay was presented on the ground that the delay was occasioned on account of wrong calculation of limitation by the learned Advocate representing the appellant. Respondent No. 1 resisted the said application by filing a reply stating that the reason given for the delay was too vague to be understood. The learned single Judge, vide impugned order dated 21-8-1989 passed in F.A. No. 176/88, held that there was no sufficient cause for condoning the delay and dismissed the application. In result, the appeal itself was dismissed as barred by limitation.

The submission of the learned counsel is that the delay was sufficiently explained

and in view of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, the delay ought to have been condoned as there was no mala fide. In that case, the petitioner was M/s. Concord of India Insurance Co. Ltd. The SLP was filed against the refusal of the High Court to condone the delay of 30 days in presenting the appeal. The ground taken was counsel's mistake in calculating the period of limitation. The High Court took the view that the lawyer's ignorance about the law was no ground for condonation of delay. Reliance was placed on (1977) 79 Pun LR 681. The Supreme Court held that mistake of counsel in calculating the period of limitation can be a sufficient cause for condonation of delay which cannot be refused on the ground that the Manager of a company is not an illiterate or so ignorant person who would not have been able to calculate the period of limitation correctly. The ratio of the judgment is that though there is no general proposition that mistake of counsel by itself is always a sufficient ground for condoning the delay, it is always a question whether the mistake was bona fide or merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The facts of the present case are somewhat similar. The affidavit sworn by the learned counsel shows that he had received the file on 3-8-1988, but was misled by the information received from his client that the limitation was available till 8-8-1988. Thus though the limitation was available only up to 6-8-1988 he was misled by the said information and filed the appeal on 8-8-1988. Even if this mistake of calculation was not that of the learned counsel, but attributable to an officer of the appellant bank, it makes little difference. An honest mistake of calculation committed either by an Advocate or by the party remains an honest mistake and will furnish sufficient ground for condonation of delay. Here the delay is only of two days and then also intervening 7-8-1988 was Sunday. We have no reason to doubt that the delay was bona fide and honestly occasioned due to miscalculation.

In result, this appeal is allowed. The impugned order of the learned single Judge dated 21-8-1989 is hereby set aside and the delay occasioned in presenting the aforesaid appeal is hereby condoned. Costs as incurred.