

(1975) 01 RAJ CK 0025
In the Rajasthan High Court
Case No : First Appeal No. 26 of 1971

Gulam Abbas

APPELLANT

Vs

Shri Kalyan Finance Co., Ajmer and Others

RESPONDENT

Date of Decision : 21-01-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 149

Citation : AIR 1975 Raj 150 : (1975) RLW 137 : (1975) WLN 33

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : Hastimal, for the Appellant; B.K. Rastogi, for the Respondent

Judgement

Kan Singh, J.—The case is before me for the disposal of an application moved by learned counsel for the appellant on 13-12-1974 u/s 149 of the C. P. C. read with Section 5 of the Rajasthan Court-fees Act for allowing time to the appellant for making up deficiency of court-fee. The application came to be made under the following circumstances:

2. The appellant filed the appeal on 2-1-1971 against the judgment and decree of the Senior Civil Judge, Ajmer dated 27-7-1970. The Office found that the appeal was filed within time, but it noticed that the certified copies of the judgment and decree did not bear court-fee stamp; the court-fee stamp required being of Re. 1/- & Rs. 1.50 paise respectively. The case was ordered to be put up on 18-2-1971, but as the deficiency of court-fee was not made good the case was ordered to be put up on 10-3-1971. On 10-3-1971, Shri Dalpat Raj, one of the counsel for the appellant, was present, but as the defects had not been removed the case was ordered to be put up before the Registrar on 5-4-1971, Before this date, however, the deficiency of Rs. 2.50 paise in court-fee was made good and accordingly the case was ordered to be listed for admission in court. On 28-4-1971 the appeal came up for admission before Bhargava, J. who admitted the same and ordered the issue of notices to the respondents. The appeal remained in the Office for the service of the respondents and was eventually

listed for hearing in court on 12-9-1973 before Modi, J. who ordered that it be put up before another Bench. Accordingly the appeal was put up before me on 8-10-1973. It was adjourned at the request of the learned counsel for the respondents. Eventually for one reason or the other the appeal was not heard by me till 5-12-1974. Learned counsel for the respondents raised a preliminary objection on the date that the appeal was barred by time inasmuch as the deficiency in the court-fee to the extent of Rupees 2.50 paise was made good after the period of limitation had expired. Learned counsel for the respondents emphasised that not only there had been no application for condonation of delay, but there was no sufficient cause either for condoning the delay. He invited attention to Jai Bhagwan v. Om Prakash AIR 1969 P&J 308 in support of his preliminary objection. Learned counsel for the appellant prayed for an adjournment to meet this objection. The case was, therefore, adjourned.

3. It was in the above circumstances that the present application u/s 149 of the CPC came to be moved,

4. Learned counsel for the respondents has vehemently opposed this application. He submits that the delay in filing the deficit court-fee should not be condoned. The appellant, according to him, had not shown sufficient cause for the condonation of the delay. Attention of the learned counsel was drawn to the defects pointed out by the Office as back as on 10-3-1971 when Shri Dalpat Raj was present.

5. The arguments on either side have travelled far and wide. The gist of submissions made by learned counsel for the appellant is that the Court had admitted the appeal and, therefore, by implication it has condoned the delay. There was further bona fide mistake on the part of the learned counsel for the appellants the Court should be liberal in condoning such delay. No right can be said to have been vested in the respondents in such a case where delay is to be condoned u/s 149 of the Code of Civil Procedure. The term "good faith" while applying Section 149, Civil P. C. has to be construed according to the General Clauses Act and not according to the Limitation Act. Learned counsel for the appellant referred me to Amar Singh v. Chaturbhuj 1957 RLW 354 : (AIR 1957 Raj 367); Jagat Ram v. Kharaiti Ram AIR 1938 Lah 361 ; Custodian of Evacuee Property, New Delhi Vs. Rameshwar Dayal and Others, ; Mahasay Ganesh Prasad Ray and Another Vs. Narendra Nath Sen and Others, ; Jagannath Prasad and Others Vs. Mst. Ram Dularey and Others, and Mata Din Vs. A. Narayanan, .

6. On the other hand, learned counsel for the respondents contended that the case of there being bona fide mistake on the part of the learned counsel for the appellant was not pleaded in the application, nor were there any circumstances put forth for the condonation of the delay. Then it was submitted that the delay in making good the deficiency in court-fee had not been reasonably explained. At any rate, according to learned counsel, the period after learned counsel was apprised of the defects and before he made good the deficiency has not been explained. Indeed, according to him, there was not a word of explanation

regarding the same in the application under consideration.

7. As regards the admission of the appeal by Bhargava J., learned counsel for the respondents argued that there could be no application of the mind to the question of defects as at that stage the learned Judge was not invited to go into the question, nor was the respondent, according to learned counsel, precluded from contesting this question. Learned counsel relied on *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, ; *Bikram Das v. Financial Commr., Revenue, Punjab* AIR 1975 P&J 1 for his submission. The learned counsel cited a number of other cases, such as, *Balkaran Rai v. Govind Nath Tiwari* ILR (1890) All 129 ; *Bua Ditta v. Ladhamal* AIR 1919 Lah 63 ; *Basawwa Dada Mali Vs. Limbawwa Dada Mali*, ; *Mahanth Ram Das Vs. Ganga Das*, ; *Saeed Ahmad v. Karam Singh* AIR 1949 Lah 121; *Smt. Amar Kaur v. Iqbal Singh* AIR 1971 P&J 461; *Jodhraj v. Kesho Deo* ILR (1955) Raj 608 ; *Shri M.L. Sethi Vs. Shri R.P. Kapur, and Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, for showing that the delay should not be condoned as a matter of course. The Court has a discretion u/s 149, Civil P. C. no doubt, but that discretion should be exercised in favour of a party who is able to show sufficient cause for the delay and in the present case, maintains learned counsel, no sufficient cause has been shown for the delay in making good the deficiency in court-fee.

8. Now Section 149 of the CPC provides that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fee has not been paid, the Court may, in its discretion, at any stage allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance. Articles 5 and 7 occurring in the second Schedule of the Rajasthan Court-fees Act provide that the judgment and decree shall bear a court-fee stamp of Re. 1/-and Rs. 1.50 paise respectively. Learned counsel do not contest that the judgment and decree were required to bear a court-fee stamp. Unlike Order 7 Rule 11 (c), Civil P. C. where the Court is bound to grant some time to supply the deficient court-fee there is no such obligation on the Court to grant time for making good the deficiency in court-fee on a memorandum of appeal. Therefore, in such a case the Court has a discretion u/s 149, Civil P. C. to allow court-fee to be paid at any stage. The discretion being judicial has to be exercised like any other judicial discretion. The discretion cannot be exercised in favour of the party who has not acted bona fide or was not under any honest mistake or doubt. It is also evident that the word "bona fide" or "good faith" has to be taken in the sense contemplated by the General Clauses Act and not as under the Limitation Act. The definitions under the Limitation Act will be applicable when the delay is to be condoned under any provision of the Limitation Act. A party who had been negligent is not entitled to the exercise of the Court's discretion in his favour, nevertheless the Court has to take note of frailties of human mind. Where the Court is satisfied that there has been a mistake not attributable to any mala fides, the Court may be justified in

condoning the delay on reasonable terms. The discretion vested u/s 149, Civil P. C. is normally expected to be exercised in favour of the litigant except in cases of contumacy or positive mala fides or reasons of a similar kind.

9. Now I may deal with the facts of the present matter. In the application the appellant takes the stand that the judgment and decree sheets were not stamped with requisite court-fee by a bona fide mistake. It was further submitted that the Court had thereafter admitted the appeal and thus it had condoned the delay by implication. Further, proceeds the application, respondent appeared in Court on several occasions, but this objection had not been taken. Even when the stay application was argued and an ad interim stay was granted on certain conditions the objection was not taken. In the alternative, it was submitted that even if the delay be not taken to have been impliedly condoned such delay be now condoned because of the bona fide mistake of the counsel for the appellant. In 1957 RLW 354 : (AIR 1957 Raj 367) Modi, J. observed :

"When a party pays deficit court-fees beyond the time fixed, and has not asked the court to extend the time, but the court nevertheless admits the appeal and receives the fee, the only reasonable interpretation is that the court has implicitly, though not explicitly extended the time, and this it can do within the meaning of Section 149 even though the period of limitation has expired."

In that case the facts were that the limitation for the filing of appeal expired on the day the appeal was filed on insufficient court-fee before the District Judge. The Court, however, did not reject the memorandum of appeal. On the following day the deficiency was made good and the stamp was cancelled and accepted by the Office of the District Judge. The District Judge, however, rejected the appeal being barred by time. On appeal the High Court held that when the memorandum of appeal was filed it was open to the District Judge to reject it at once as the document was insufficiently stamped and if he did not do so, it was open to the District Judge to allow the deficiency to be made good, whether the document has been accepted by inadvertence or expressly u/s 149, Civil P. C,

10. In Mahasay Ganesh Prasad Ray and Another Vs. Narendra Nath Sen and Others, their Lordships of the Supreme Court held that the question of payment of court-fee is primarily a matter between the Government and the person concerned and, therefore, where the High Court in the exercise of its discretion allows the appellant to amend his memorandum of appeal and grants time for payment of deficient court-fee u/s 149, Civil P. C. the other party cannot attack the order on the ground that it takes away his valuable right to plead the bar of limitation. None of the other cases lays down a contrary principle.

11. As already observed by me, the question is one of exercise of discretion on sound principles and where the Court is exercising its discretion in favour of a party u/s 149, Civil P C. it is not there by depriving the opposite party of any of the vested rights. Such right might become vested only when either there is no application u/s 149 or when such an application is filed the discretion is not

exercised in favour of the party applying u/s 149, Civil P. C. The Office order dated 10-3-1971 shows that the case was ordered to be put up before the Registrar on 5-4-1971. On 2-4-1971 learned counsel for the appellant had made good the deficiency. On 2-4-1971 the Office reported that the defects had been removed and on the same day the Deputy Registrar set down the appeal for admission in Court. The appellant had paid in all the court-fee of Rs. 1060/- on the memorandum of appeal. There was a deficiency of RS. 2.50 only concerning the judgment and decree sheet. The application is supported by the affidavit of Shri Dalpat Raj that he laboured under a bona fide error and, therefore, could not affix the stamp on the judgment and decree. The appellant had provided sufficient funds to his counsel. The counsel was a junior counsel who was handling the brief and it is understandable that he was not quite conscious and had committed mistake in not stamping the judgment and decree sheet with court-fee stamp which involved a paltry sum of Rs. 2.50 paise. If the appeal is thrown out on this ground, to my mind, it will be no justice.

12. In the circumstances I hereby condone the delay, but the respondents should be compensated with costs.

13. Accordingly, I hereby condone the delay in making good the deficiency in court-fee, but this shall be on the condition that the appellant pays Rs. 100/- as costs to learned counsel for the respondents. Fifteen days time is allowed for the payment of costs.