

(1985) 01 MP CK 0004
In the Madhya Pradesh High Court
Case No : S.A. No. 111 of 1971

Hiralal Sarman Prasad and others

APPELLANT

Vs

Amarnath Batra and others

RESPONDENT

Date of Decision : 18-01-1985

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1985) JLJ 524 : (1986) MPLJ 149

Hon'ble Judges : Rampal Singh, J

Bench : Single Bench

Advocate : S.B. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Rampal Singh, J.

Defendant-appellant has preferred this appeal against the judgment and decree passed by Shri S.P. Shrivastava, IIInd Additional District Judge, Gwalior, dated 8-2-1971, in Civil Appeal No. 28-A of 1970.

The plaintiff respondent filed a suit for ejectment of the appellant, arrears of rent and mesne profits, in the Court of Fourth Civil Judge, II Class, Gwalior. By his judgment and decree dated 6-2-1970, the trial Court decreed the suit against the appellant. The appellant preferred an appeal in the District Court on 19-6-1970, and along with the memo of appeal, the appellant also submitted an application u/s 5 of the Limitation Act, for condonation of the delay occasioned in filing the appeal. In that application, the prayer was made for the condonation of delay from 8-4-1970 to 15-4-1970 and also from 16-4-1970 to 17-6-1970. The first appellate Court by the impugned order rejected the application filed u/s 5 of the Limitation Act and held the appeal to be barred by limitation. Aggrieved by the said order, the appellant has preferred the present appeal.

According to the appellant-defendant, he paid Rs. 10.25P, to one Kailash, clerk to Shri Shyam Bihari Advocate for obtaining the copy of the judgment and decree

on the very day, the judgment was passed by the trial Court. The said Kailash, according to the appellant, did not present any application for obtaining the copies of the judgment and decree, but give a receipt of a different case to the appellant. The appellant further stated in his application u/s 5 of the Limitation Act, that from time to time, he deposited rest of the amount for obtaining the copies of the judgment and decree, with the said clerk. At last, he received and obtained a copy on 7-4-1970, which he handed over to his counsel Shri Shyam Bihari Mishra on 7-4-1970. Shri Mishra, Advocate, is said to have perused those copies only on 15-4-1970 and found to his surprise that those copies do not relate to the case of the appellant. When the said Advocate of the appellant enquired from the Clerk, then the Clerk admitted to have obtained wrong copies. The clerk also admitted to the Advocate that he has not filed any application for obtaining the copies of the judgment and decree of the appellant's case. It was only on 16-4-1970 that the appellant made an application for obtaining the copies of the judgment and decree of this case. The copies of the judgment and decree were supplied to him on 17-6-1970, 18-6-1970 was a public holiday. Therefore, the appeal before the first appellate Court was filed on 19-6-1970.

According to the appellant, the delay occasioned in between 8-4-1970 to 15-4-1970 was due to the wrong information and negligence of the pleader's clerk and the delay between 16-4-1970 to 17-6-1970 was the period spent in obtaining the copies of the judgment and decree of this case. According to the appellant, the cause of the delay was negligence and carelessness of the Clerk of his Advocate. The appellant further submitted that he acted in good faith and with due diligence. According to him, the above noted facts are "sufficient cause" and that is why he prayed for condonation.

Shri Mishra, appearing before me has again reiterated the above noted facts and has submitted that the affidavits filed by his client before the first appellate Court were not controverted by the respondent, and that is why the first appellate Court should have condoned the above noted delay.

It is well settled that "sufficient cause" involves the question to condone the delay u/s 5 of the Limitation Act, a party has to satisfy the Court that he has sufficient cause for not preferring the appeal within the prescribed limit. This has always been understood to mean that the explanation has to cover the whole of the period of delay. In the cases falling u/s 5 of the Limitation Act what the party has to show is why he did not file his appeal on the last day of limitation prescribed therefor. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day of limitation, but also to explain the delay made thereafter day by day. See *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, .

The cause for delay which, by due care and attention, party could have avoided cannot be a "sufficient cause". If the appellant was constantly in touch with the Clerk of his Advocate, then he should have known that his agent, i.e. the Clerk, has filed an application for obtaining a copy of wrong case. The test whether or

have been avoided by the party by the exercise of due care and attention; in other words, whether it is a bona fide cause, inasmuch, as nothing shall be deemed to be done bona fide or in good faith which is not done with due care and attention. From the facts stated above, it is very much clear that every thing, which was being done either by the Clerk of the Advocate or by the Advocate himself or the appellant himself nothing was being done with due care and attention.

A party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstances arising before limitation expired, it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. *Ajit Singh Thakur Singh and Another Vs. State of Gujarat*, .

The fundamental rule of guidance for the exercise of discretion under the section, is to see whether the party claiming the indulgence has been reasonably diligent in prosecuting his appeal or application. On the anvil of this test, it is apparent that the appellant and his agent were not reasonably diligent in obtaining the correct copies of the judgment and decree. It is well settled that when the time for filing the appeal is once passed, a very valuable right is secured by the successful litigant and the Court must, therefore, be fully satisfied of the justness of grounds on which the appellant seeks to obtain extension of time for attacking the decree and thus, perhaps depriving the successful litigant of the advantage, which he has obtained. The period for preferring an appeal cannot be, extended simply because the appellant's case is hard and calls for sympathy, nor will the Court extend the period of limitation merely out of benevolence to the party seeking relief. The Court for granting indulgence must be satisfied that there was diligence on the part of the appellant and that he was not guilty of any negligence whatsoever.

The up-shot of the above discussion in nutshell is that the appellant was negligent and careless in obtaining the copies of the judgment and decree, which he could have obtained by exercising due care and attention. The appellant thus was not entitled for any condonation u/s 5 of the Limitation Act. The first appellate Court has rightly evaluated the situation and appreciated facts. It needs no interference from this Court.

In consequence, this appeal is dismissed. However, there shall be no order as to costs.