
(2014) 07 SHI CK 0159
In the High Court Of Himachal Pradesh
Case No : FAO No. 176 of 2014

Jit Singh

APPELLANT

Vs

Dhian Singh

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 14 Rule 1, Order 14 Rule 3, Order 41 Rule 19, Order 43 Rule 1(t)
Limitation Act, 1963 — Section 5

Citation : (2014) 07 SHI CK 0159

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Anup Rattan, Advocate for the Appellant; Praveen Kumar Chandel, Advocate vice and Nipun Thakur, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.—This appeal under Order 43 Rule 1(t) is directed against the order dated 18.03.2014 passed by learned Additional District Judge (II), Una, in Civil Miscellaneous Application RBT No. 22/13/08, whereby the application preferred by the appellants under Rule 19 of Order 41 of the CPC has been dismissed.

2. It is not disputed that the appellants had preferred an appeal against the judgment passed by the learned trial Court which was registered as Civil Appeal RBT No. 210/04/2000 and was taken up for hearing on 07.04.2008 and the same was dismissed in default due to non-appearance of the appellants or their counsel. Thereafter, an application for restoration of the appeal along with an application u/s 5 of the Limitation Act for condonation of delay in filing of the application under Order 41 Rule 19 CPC was preferred on 29.09.2008. Para-2 of the application reads thus:-

2. That in this case Sh. Des Deep Choudhary, Advocate, Amb was engaged as their counsel by the applicants but unfortunately Sh. Des deep Choudhary,

Advocate, Amb was seriously ill as his kidneys have completely failed and he and his family went to hospital for transplantation of kidneys and remained admitted there for number of months together and he is still there in the hospital. Due to this reason the counsel for the applicants did not appear on the relevant date and the applicants were advised by their counsel not to attend the court as the formal dates are taken earlier.

3. The application was contested by the respondents by filing reply which reads thus:-

Reply to the application U/o 41 Rule 19 C.P.C.

Sir,

The respondents submit as under:-

1. Para No. 1 of the application is not denied.
2. Para No. 2 of the application as stated is wrong and denied.
3. Para No. 3 of the application is wrong and denied.
4. Para No. 4 of the application is wrong and denied.

The prayer clause is wrong and denied. The application is not within time nor there any valid ground for condonation of inordinate delay. The application as such merits dismissal with costs.

Dated 28-5-2012

Respondents. Through Counsel

4. Thus what would be seen from the contents of the reply is that the denial of the contents of the application was no denial, rather cryptic and evasive and was, therefore, no denial in the eyes of law. The factual aspect as set out in the application was not even contested or disputed by the respondents.

5. Despite there being virtually no contest insofar as the factual position is concerned, I fail to understand why the learned lower appellate Court proceeded to frame the issues on 18.03.2013. The material on the basis of which an issue may be framed has been clearly set out in Order 14 Rule 1 which has to be read in consonance with the provisions of Order 14 Rule 3 CPC which read thus:-

Order 14 Rule 1

R.1. Framing of issues.-

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact.

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Order 14 Rule 3

R.3. Materials from which issues may be framed.- The Court may frame the issues from all or any of the following materials:-

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

6. What would appear from the combined reading of the aforesaid provisions is that an issue would only arise when material proposition of fact and law is affirmed by one party and denied by the other. Issues are to be framed in respect only of those facts which have been alleged by one party or either denied or not admitted by the other party. It also cannot be denied that an allegation of fact must either be denied specifically or by necessary implication or there should be a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to have been admitted.

7. Taking into consideration the specific averments made in the application coupled with cryptic, evasive and a general denial in the reply as reproduced above, there was no occasion for the learned Court to have framed the issues. In fact, the application could have been allowed at that stage itself. Yet on account of the Court having framed the issues, the parties had undergone an ordeal and agony of a full-fledged trial which too unfortunately has resulted in the dismissal of the application. The learned Court below ought to have taken a more pragmatic and practicable approach to the entire case, especially, in view of the averments as contained in Para-2 of the application which contents had not even been disputed by the respondents.

8. It must be grasped that Judiciary is respected not on account of its powers to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. It is settled law that when substantial justice and technical considerations are pitted against each other, substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done or perpetuated. It is not that this Court is unmindful of the fact that the respondents herein have been dragged into unwarranted and otherwise unavoidable litigation, but, at the same time, they can definitely be compensated for the same.

9. The learned lower appellate Court has assigned the following reasons for rejecting the plea of limitation of the applicants:-

12. The delay in moving application has not been explained. It is settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statutes so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation". The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means " the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, " inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence; or laches. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by the court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of statutory provisions and it tantamounts to showing utter disregard to the legislature.

10. A close reading of Section 5 of the Limitation Act makes it clear that the legislature had advisedly, left the term "sufficient cause" undefined and unillustrated for what is sufficient cause in one case may not be so in another case. Thus the term is kept elastic and unfettered discretion has been conferred on the Courts to do substantial justice considering facts and circumstances of the case. The sum and substance of the guidelines passed in various judgments of the Hon'ble Supreme Court is that the discretion has to be exercised judicially

and the approach of the Court should be liberal and pragmatic but not pedantic. The judicial discretion has to be exercised in accordance with the rules of reason and justice and not according to private opinion. The guiding principle is that justice should not be sacrificed on the alter of technicalities, though, at the same time, the Courts cannot lose sight of the statutory requirement of "sufficient cause" and condone delay on equitable grounds. It is settled proposition that law of limitation may harshly affect a particular party but then it has to be applied with all its rigour when the statute so prescribes.

11. The learned Court below was required to come to the conclusion that the appellants had infact acted in a negligent manner and there was a want of bonafide on their part or that they had not acted diligently or remained inactive. Here was a case where the specific claim of the appellants was to the effect that the counsel engaged by them had suddenly fell ill and had been seriously ill as his kidneys had completely failed and he and his family members had gone to the hospital for transplantation of the kidneys and remained admitted there for numbers of months together and was stated to be still in hospital. This factual position, as already observed, was not even contested by the respondents yet not only the learned Court below illegally and erroneously chose to frame the issues, but even rejected the application for restoration by adopting a high pedantic approach.

12. Since the respondents have been put to unnecessary burden of facing this litigation, they must be compensated and, therefore, while allowing the present appeal, the appellants are saddled with costs of 10,000/- which shall be paid by the appellants to the respondents No. 1 to 3 herein on or before the next date of hearing before the learned Court below or else the impugned order shall stand.

13. The parties through their counsel are directed to appear before the Court of learned Additional District Judge (II), Una, on 26.07.2014.

14. The pending application (s), if any stands disposed of in view of disposal of main appeal.