
(2011) 11 MP CK 0086
In the Madhya Pradesh High Court
Case No : MCC No. 1308/11

Kashi Bai

APPELLANT

Vs

Smt. Poona Bai

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149
Limitation Act, 1963 — Section 5

Citation : (2011) 11 MP CK 0086

Hon'ble Judges : Tarun Kumar Kaushal, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

I.A.No.10680/11, an application u/s 5 of the Limitation Act for condonation of delay in filing MCC No.1308/11

1. Though learned counsel appearing for respondent vehemently opposed this application by stating that no ground is made out for condonation of delay, but considering peculiar facts of the case, we find it a fit case for condonation of delay and accordingly the delay in filing this MCC is condoned.

2. Heard the learned counsel on MCC No.1308/11

3. By this application, the applicant is seeking restoration of First Appeal No.184/07 which was dismissed in default on 24.10.2007. It is stated in the application that the applicant engaged Shri Mohan Tamaskar, Advocate and paid him court-fee apart from legal fee. The Counsel had not deposited the court-fee and filed the appeal without payment of court-fee. Thereafter, the matter remained pending before this Court for removing the default of payment of deficit court-fee. However, a peremptory order was passed by a Division Bench of this Court on 3.10.2007 allowing 10 days opportunity to the appellant/ applicant for payment of court-fee and to move an appropriate application. Neither the court-fee was paid nor an application u/s 149 of CPC was filed, resulting dismissal of the first appeal on 24.10.2007.

4. It is stated that the applicant is 75 years old lady and had done all necessary for filing an appeal, but it was a fault on the part of the counsel who neither deposited the court-fee inspite of payment to him nor filed any application seeking extension of time as is required u/s 149 of CPC. So applicant suffered dismissal of the appeal.

5. Learned counsel for applicant submitted that so far as court-fee which was paid to the counsel is concerned, the applicant shall take separate steps, but now applicant is ready to make payment of court-fee in the appeal after its restoration.

6. Considering peculiar facts of the case, on 19.9.2011, we directed issuance of the show cause notice to Shri Mohan Tamaskar, Advocate, as serious allegations were made in paras 6 to 10 of the application and inspite of service, he has not caused appearance. In these circumstances, we refer the matter of Shri Mohan Tamaskar, Advocate to the State Bar Council of M.P. for taking appropriate action in this regard. A copy of MCC No.1308/11 alongwith affidavit of the applicant be sent to the Secretary, M.P. State Bar Council, Jabalpur who shall take action in accordance with law against Shri Mohan Tamaskar and apprise this Court in respect of the outcome of the aforesaid action within a period of three months positively.

7. Considering reasons stated in the application-MCC No.1308/11 which are strange in nature, we find it fit case for restoration of the appeal. Though Shri Anurag Tiwari, learned Counsel for respondent opposed the aforesaid prayer, but in the interest of justice, we find that a case has been made out by the applicant for restoration of the First Appeal. Accordingly, this application-MCC No.1308/11 is allowed. First Appeal No.184/2007 dismissed in default on 24.10.2007 is restored to its number and office is directed to list F.A.No.184/07 for hearing on 30.11.2011.

8. Considering the fact that both applicant and respondent are real sister and are running in the age of above 70 years, we find it appropriate to call both of them to be present before this Court and to explore any possibility of settlement between the parties and accordingly, both are directed to remain personally present before this Court on 30.11.2011.

9. No order as to costs.